

No. 124205

IN THE SUPREME COURT OF THE STATE OF KANSAS

Butler, Kristin, and Bozarth, Scott
Plaintiffs

v.

Shawnee Mission School District Board of Education
Defendant-Appellee

Attorney General Derek Schmidt
Intervenor-Appellant

Brief of Amicus Curiae Johnson County Plaintiffs Case No.
21cv01942

Appeal from the District Court of Johnson County, Kansas,
The Honorable David W. Hauber, Judge
District Court Case No. 21 CV2385

Linus L. Baker, Attorney
Kansas Bar No. 18197
6732 West 185th Terrace
Stilwell, Kansas 66085
Telephone: 913.486.3913
Facsimile: 913.232.8734
linusbaker@prodigy.net
21cv01942 JOCO *Amicus*
Curiae

TABLE OF CONTENTS

| | |
|--|----|
| Statement of Interest of Amicus Curiae | 1 |
| Argument | 1 |
| Fundamental Rights are at Issue | 1 |
| Kansas Bill of Rights | 2 |
| <i>Tillman v. Goodpasture</i> , 313 Kan. 278, 485 P.3d 656 (2021) | 2 |
| <i>Hodes & Nauser, MDs, P.A. v. Schmidt</i> , 309 Kan. 610, 440 P.3d 461 (2019) | 2 |
| The Tenth Judicial District’s Customized Version of SB40 | 2 |
| <i>Employment Division, Department of Human Resources of Oregon v. Smith</i> , 494 U.S. 872 (1990) | 4 |
| <i>City of Hutchinson v. Ryan</i> , 154 Kan. 751, 121 P.2d 179 (1942) | 5 |
| <i>State v. Raschke</i> , 289 Kan. 911, 219 P.3d 481 (2009) | 5 |
| Division 7 Versus the Kansas Legislature | 5 |
| Blue Valley Recognized a Harm to Students in Wearing a Mask But Refused to Follow Its Own Covid 19 Policy | 7 |
| SB40 is an As Applied Challenge | 8 |
| <i>Finstad v. Washburn Univ.</i> , 845 P.2d 685 (Kan. 1993)..... | 9 |
| The School District’s Improper and Self-Imposed SB40 Grievance Procedure | 10 |
| The Procedures Were Not Required and the Ones They Used Violated Privacy | 11 |
| School Board’s Created Their Own Mess by Abdicating Their SB40 Responsibilities | 12 |
| <i>Suburban Medical Center v. Olathe Community Hosp.</i> , 226 Kan. 320, 597 P.2d 654 (1979)..... | 13 |

| | |
|---|-----|
| <i>Santee v. North,</i> 223 Kan. 171, 574 P.2d 191 (1977)..... | 13 |
| <i>Smith v. Miller,</i> 213 Kan. 1, 514 P.2d 377 (1973)..... | 13 |
| The Kansas Legislature is Not Going Away and Blue Valley is Creating More of Its Self-Imposed Problems | 13 |
| Conclusion | 15 |
| Certificate of Service | 16 |
| APPENDIX | A |
| Order Granting Change of Judge | A1 |
| JOCO order 21-01 | A3 |
| Blue Valley Rules of Procedure | A5 |
| JOCO Commissioners Health Order..... | A7 |
| JOCO Petition 21cv4186..... | A11 |

Statement of Interest of 21cv01942 Amicus

The 21cv01942 Amicus parents and their children all filed timely SB40 grievances on behalf of their individual children who were students in the Olathe or Blue Valley school districts. Those claims filed May 3, 2021, are all pending in Johnson County case 21cv01942.

Argument Fundamental Rights are at Issue

The premise of the Shawnee appellant and amicus Blue Valley is that they are the ones harmed and that the children are not. The parents and their children are characterized as the villains perpetrating this purported harm using SB40 as their wielded weapon. The lower court (Division 7) of Johnson County and the Shawnee school district asserted there was never a harm to any child because “no fundamental right is at stake with a SB 40 action” and that there is “no fundamental right impacted by a requirement to wear a face covering....” What irony. What denial. Health and education are surely fundamental. And equally ironic is that all of Shawnee and Blue Valley’s briefing is narcissistic: not one word is spoken acknowledging the real world harms to their students because of mask wearing all the school-day long. Instead, they portray themselves as the victims in its upside down world. All of the plaintiffs had grievances alleging that wearing a mask substantially interfered with the learning process and affected the child’s health.

SB40 creates a procedure for individualized relief for a grievant. Within that process are fundamental rights being asserted by those parents. Shawnee then complains that SB40 “assumes harm” but the Butler and these plaintiffs didn’t ask

the school boards or Johnson County’s Division 7 to assume anything – they all filed concrete individualized grievances about the specific harms to their own specific child. In fact, Blue Valley’s own “Navigation Change” policy recognized that a mask should not be required if it “interfered with the learning process.” But alas, it did not even follow its own policy.

And under the Kansas Bill of Rights, it recognizes both the fundamental right of conscience and religion. It recognizes the expansive Section 18 Declaration of Independence kind of autonomy rights. It “grants all individuals the right to make decisions regarding their body, health, family formation, and family life....” *Tillman v. Goodpasture*, 313 Kan. 278, 485 P.3d 656, 679 (2021) (Rosen, J. dissenting) (citing *Hodes & Nauser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 440 P.3d 461 (2019)). Masks implicate parental consent, autonomy, and privacy under the Kansas Bill of Rights. The 21CV2385 petition plainly stated fundamental health and educational claims of irreparable harm justifying injunctive relief: “Her child suffers the loss of an education and is irreparably harmed”; “masks are harming schoolchildren physically, psychologically, and behaviorally...”). In Johnson County case no. 21cv04186 (appendix Petition) it extensively cites studies that masks harm children in numerous ways. *See* p. 22 paras 86-89 (citing studies documenting physical and psychological harm).

The Tenth Judicial District’s Customized Version of SB40

Let’s talk about the deck of cards dealt the plaintiffs. First, school districts made up their own arbitrary rules on the SB40 grievance procedure which were not contemplated in SB40. By any measure they were arbitrary and many times over

favorable to the school district. See appendix Blue Valley rules. Then under those rules a school district was entitled to be its own judge, argue its case as an adversary against the parents to itself, then decide whether it would agree with itself. It was more like a Russian election process. But step aside you school boards, you were not the only ones to do monkey business with SB40. As Division 7 pronounces in its order on page 5, there is this JOCO administrative order no. 21-01 which not only is unauthorized under SB40 (“The *supreme court* may adopt emergency rules of procedure to facilitate the efficient adjudication of any hearing requested under this subsection”)(emphasis supplied) but actually accomplished many of the purported ills and unfairness issues cited by Division 7 in its analysis. Division 7 claimed the local order merely “fills in the details of the procedure lacking in SB 40.” Butler order, p.6. See appendix 21-01. Really? The truth: it essentially rewrites and modifies SB40. Any cursory examination of 21-01 demonstrates it does far more than expounding upon procedures (reserved only for this Court). Let us count the ways. 21-01 utterly tramples upon the civil rules of notice pleading elevating the pleading to one of “fact pleading” and one meeting the standards of a fraud pleading. It limits the petition to grievances over an “order” rather than including SB40 “actions” or “policies adopted.” It modifies the elements of the action with its proof and burdens of proof requiring placing the burden upon the plaintiff to show how the actions of a board “could be more narrowly tailored” and “suggest less restrictive means.” It redefines “grievance” to an “aggrieved burden” and then an exhaustion requirement in whether the parent “expressed” that at a grievance hearing. Then it ultimately altered the entire scheme

by requiring a plaintiff to show “how the petitioner’s burden is substantially different from the burden upon persons or entities similarly situated who are not included on the petition” (imposing an inapplicable federal standard in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990)). The plaintiffs were more like baby sea turtles running the gauntlet of arbitrary school and local judicial orders to reach shore. Truly, as is typical with the Tenth District electing to be the big county tail wagging the little state-wide dog, it was not going to wait on a Supreme Court order or let SB40 proceed on its own terms. Division 7 *still* opines that its competing local rule applies to current SB40 lawsuits in JOCO. So both Shawnee and Blue Valley bemoan the 72 hour hearing requirement in SB40 even though JOCO 21-01 imposes upon them the same, if not more onerous, requirements. Speaking of moaning, Blue Valley and Shawnee thrash about with their contentions that the 7 day order deadline is so unfair yet don’t talk about what Division 7 says is the SB40 trigger event: the hearing. Contrary to assertions, there has been no SB40 hearing in JOCO or in federal court for these plaintiffs. But now get this: after having ruled that it is unfair to require a school “72 hours from the filing of the petition to respond” and then the following 72 hour hearing, Division 7 says never mind: the 72 hour hearing requirement can be treated as a mere suggestion. See 9/10 YOUTUBE <https://www.youtube.com/watch?v=2rc1eg492Co> (JOCO 21CV04112 and references to another SB40 case 21CV4186). Division 7 theorizes a loophole in the SB40 process in thwarting the timeline process it so eschews by making the 72 hour hearing a trigger to be pulled only when Division 7 is

good and ready to pull it. Thus the 10 day start to finish window contemplated in SB40 is shattered. NOTE: the 72 hour hearing requirement cannot be read in isolation from the 7 day order requirement with its consequences. Disregarding the 72 hour hearing requirement nullifies the 7 day order requirement. The two deadlines work hand in hand contrary to Division 7's current musings. It is not directory but mandatory because the legislature contemplated a combined 10 day period in which the plaintiff would obtain her individualized relief. Not obtaining this relief within this period is defined by the legislature as granting the relief requested. Not granting the relief to a plaintiff within the ten days is denial of a substantial right to relief and harm to the plaintiff. That is substance and not form. *See City of Hutchinson v. Ryan*, 154 Kan. 751, 121 P.2d 179 (1942) ("strict compliance with the provision is essential to the preservation of the rights of parties affected and to the validity of the proceeding"); *State v. Raschke*, 289 Kan. 911, 219 P.3d 481 (2009) (four factors). "Shall" means shall.

Division 7 Versus the Kansas Legislature

This amicus joins in the others assessments of the lower court's judicial activism. In JOCO 21CV2385, despite the fact that the Tenth Judicial District was a named party defendant, Division 7 would not recuse itself. Instead it granted the defendants' joint motion (including the Tenth District's) to stay response deadlines even though a motion to change judge was pending. In its zeal, Division 7 theorized it could sever the Tenth Judicial District from the suit and then retain the remaining SB40 claims – ignoring the fact it would be making substantive rulings on behalf of the Tenth District. Division 7 also opined in its Butler ruling that it could not see any

fundamental rights at play and then flogged every plaintiff and their counsel as being harassing political hacks and pawns doing the bidding of the Kansas legislature.

Division 7 described the Butler and the Baker plaintiffs situation as not involving “an emergency” but rather merely being a “protest petition.” See Butler Judgment fn.5 (“No emergencies have materialized in any of the cases filed in this division (three of them). Rather, they reflect protest petitions”); Id. at p.1 (denying relief to those plaintiffs “over their efforts to protest the Shawnee Mission School District (“District”) policy”); p.1 (“Court asked the Kansas Attorney General to intervene in this matter because of identifiable constitutional issues in SB 40 that, in many respects, have become the basis for parents protesting school masking policies”). The nomenclature “protest petition” was utterly demeaning and incorrect. According to the lower court, these parents were using the court as a political vehicle – not seeking judicial relief for a compensable injury. Its use in Kansas is also referred to as many property owners protesting a zoning decision.

Division 7 castigated these parents – all parents – as mere political protestants – not parents who are seeking real relief for their children. It is clear Division 7 views the SB40 causes of action as a referendum subterfuge created by the Kansas legislature: nothing more than a legislative artifice of personal warfare *mano a mano* against the judiciary baiting parents to politically “protest” school policies on masks – at judicial expense. Those statements made in Butler about these plaintiffs, their motivations, and Division 7’s opinion that no “emergency” existed is prejudicial, biased, and untrue. In its activism and zeal to shepherd its SB40 ruling, Division 7

denied the motion to change judge in 21cv01942 then granted more affirmative relief to the Tenth Judicial District in staying the entire case while the Chief Judge of Miami County heard the subsequent formal motion to change judge. The Chief Judge of Miami county granted the plaintiffs motion to change judge. See Appendix order granting change of judge by Chief Judge of Miami county.

Blue Valley Recognized a Harm to Students in Wearing a Mask But Refused to Follow Its Own Covid 19 Policy

The Kansas legislature was right in being concerned as to how Covid 19 policies were being created and applied. As the Kansas Justice Institute’s Amicus brief points out, the variations of Covid 19 policies were wildly multiple, inconsistent, and in many cases irrational. In the case of Blue Valley, it too played loosey-goosey with its own policy. It actually refused to follow its own Covid 19 policy which it said was adopted from the Board of Education’s “Navigating Change” policy. The Navigating Change document specifically provided for an individualized mask exemption for any one student on the basis that it inhibits *a* student’s participation in the educational process. The Navigating Change Policy, page 1048, specifically provided a learning problem exemption. The Kansas Board of Education recognized mask wearing could result in harm to the student through the inhibition to the “student’s ability to participate in the educational process.” And not to be overlooked is that the exemption was individualized: it was not “all students” (in the plural) but rather singular. A “student’s” inhibition of the learning process that this exemption is designed to address. It is entirely individualized. But Blue Valley wouldn’t follow its own policy. Thus, similar to Shawnee, Blue Valley presents its own versions of

false dilemmas on many fronts. Blue Valley had already provided for individualized exemptions to each student based upon it interfering with the learning process. But in its amicus, it now claims the parent’s act of seeking individualized accommodations “abused” it and SB40. So providing an individualized exemption is more onerous, more unfair, more abusive than upending the entire policy? Neither Shawnee nor Blue Valley explain that one. Contrary to their interpretations, what it boils down to in the SB40 grievance process is not a question of proving strict scrutiny as to all students – it only required the school to demonstrate something far more focused: that it demonstrate a compelling interest to require this particular student to wear a mask – else the policy would collapse. Both Shawnee and Blue Valley are well aware they could never prove this because they already provide for an unlimited number of mask exemptions. So they created their own false dilemma claiming a grievance for one student meant a grievance for all students. Look, no one asked any school board to jettison entirely its policy on masks as to all students. And isn’t the question this: just how many masked students are needed to make the Covid 19 mitigation “purpose” achievable? According to both schools, there is no such number because of the unlimited number of exemptions that are available to students. Truly the reason *why* a mask is not being worn has no relevancy from a scientific viewpoint as to whether Covid 19 is more or less likely to spread.

SB40 is an As Applied Challenge

Shawnee says SB40 is unfair. Blue Valley goes over the top claiming schools are the domestic victims of the Kansas legislature: they are literally being “abused”

by these parents who say SB40 is as an “as-applied” challenge made by a particular student or parent who is “aggrieved.” These school district’s sky-is-falling position that their entire Covid 19 policy would be dismantled if one grievance was granted was truly contrived. It was purposely conjured to divert and exaggerate. The language of SB40 states in the *singular*: “An employee, a student or the parent or guardian of a student aggrieved by an action taken, order issued or policy adopted by the board of education...”. By using “aggrieved” as a descriptor of employee, student, or parent, the legislature communicated its intent to limit it to an as applied challenge, providing for the identity of an individual who can bring such a suit, and then granting that right to only those whose personal rights are infringed upon. It is called a “grievance.” Thus it is an as applied “grievance.” A “student” is not all students. A parent does not have standing to claim a grievance on behalf of any or all students other than their own. Contrary to the schools all-for-one-one-for-all interpretation, to be “aggrieved” is individualized and personal. See *Finstad v. Washburn Univ.*, 845 P.2d 685, 471-72 (Kan. 1993) (“a denial of some *personal* or property right, or the imposition upon a party of some burden or obligation”) (Emphasis supplied). Thus, the SB40 grievances are not a kind of facial challenge as to whether the school’s mask policies, as generally applied to all students, live or die. To the contrary, the grievance is completely focused on whether the school must require this particular student to wear a mask in order to accomplish the goal of hindering the spread of Covid 19 while providing an in person education to that student.

The School District's Improper and Self-Imposed SB40 Grievance Procedure

Beyond its exaggerated and wrong interpretation of what a parent is actually making grievance for, the schools then ignore the fact they self-imposed their own procedural quagmire (its “mess”). Not to be overlooked was SB40’s get-out-of-jail-avoid-a-lawsuit procedure. They all declined and complain that it’s the plaintiffs fault they refused to provide the individual relief. And boy was this ever scripted. All of the school districts, including Blue Valley, somehow magically came up with a unified interpretation that there was a “hearing officer” to be imposed into the SB40 grievance procedure. Under that orchestrated contrived procedure, the school districts required the parents to appear before an employee of the school or a hired third party attorney to conduct a meeting with no board member present. These were not SB40 hearings – they were simply ZOOM meetings broadcast publicly improperly requiring the parent to reveal personal information about their child and the child’s health. And having created their own rules of the game, did they ever take advantage of that. The school districts made themselves adversaries to the parents in the very hearing that was supposed to be objective. Even in their arguments to themselves at the hearing officer level, they did not argue to themselves that their Covid 19 mitigation policy would fail if just one more exemption was granted for any particular child. Instead, the boards all argued their pre-written scripts to themselves that a grievance on behalf of one child was a request to have the entire policy thrown out. In each grievance, the hearing officer denied the grievance, then the hearing officer appeared before the school board, along with the school’s own attorney to continue

arguing for the denial of the grievance (but not allowing the parent or the parent's attorney to appear). Of course, that sounded really fair to these schools. To all of that the Blue Valley amicus bemoans it was "a mess" and required many hours for the board to actually have the words of parents ascend as muted prayers to the lofty heights of its board. It was an arbitrary and unfair two-tier disregard of the SB40 procedure which contemplated the grievance was to be heard before a quorum of the school board. There was no provision in SB40 for any of the schools to impose a "hearing officer" step as a firewall preventing the parent having her grievance factually heard by a quorum of a board.

The Procedures Were Not Required and the Ones They Used Violated Privacy

There was no place for any so-called "hearing officer" meeting as though this were an administrative appeal process. The idea that a school board would advocate to itself to deny a grievance is quite preposterous and makes a mockery of the entire SB40 process. Of course, SB40 is a cause of action – not an appeal ("may file a civil action in the district court..."). The SB40 hearing could only take place before the Board at a quorum meeting yet the school boards mix and match and boil it all together as though this is not required. Clearly SB 40 requires a hearing to be in an "open meeting." It states that "any meeting of a board of education of a school district discussing an action, order or policy described in this section, including any hearing by the board under subsection (c), shall be open to the public in accordance with the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto...." These hearing officer "meetings" did not meet the hearing requirement in SB40. A school

board cannot conduct a “hearing” unless it conducts a meeting that is subject to KOMA. And that only happens when a quorum of a school board meets. SB 40 further states that “upon receipt of a request under paragraph (1), the board of education shall conduct a hearing....” But the school boards did not conduct a SB40 meeting that is subject to KOMA when it used its “hearing officer” Zoom conference gathering. An “open meeting” requires a “meeting” by the Board. Under the school district’s own policies, they may only conduct “regular” or “special” meetings. These Zoom conferences with a hired third party attorney are not “hearings” or a regular or special meetings of a school board. There was no quorum of Board members present and there was no meeting. SB 40 requires that a school board conduct a meeting in order to then conduct the hearing on a SB 40 grievance which is subject to KOMA. Thus a “hearing” cannot occur unless it occurs within the “any meeting of a board of education” requirement. Each Board was required to convene a meeting satisfying quorum and at that meeting to conduct a hearing. The schools deliberately obfuscated the SB40 statutory process into a firewall and now complain how their self-imposed requirements were unfair to themselves.

School Board’s Created Their Own Mess by Abdicating Their SB40 Responsibilities

The SB40 determination and fact-finding function cannot be delegated to an employee of a school or a third party attorney called a “hearing officer.” SB40 is an enabling statute. It mandates a school board conduct fact finding and to hear the grievance at a quorum of the board occur at an open meeting subject to KOMA. This function is not ministerial or administrative but quasi-judicial. An administrative

board or officer performs a quasi-judicial function when empowered to investigate facts, weigh evidence, draw conclusions as a basis for official actions, and exercise discretion of a judicial nature. See *Suburban Medical Center v. Olathe Community Hosp.*, 226 Kan. 320, 330, 597 P.2d 654 (1979); *Santee v. North*, 223 Kan. 171, Syl. ¶ 2, 574 P.2d 191 (1977); *Smith v. Miller*, 213 Kan. 1, 11-14, 514 P.2d 377 (1973). Here, the school district boards abrogated their SB40 duty by injecting a “hearing officer” to do their work. The schools had no SB40 authority to delegate to a single employee what was the Board’s sole obligation to conduct a hearing with a quorum of the Board.

**The Kansas Legislature is Not Going Away and Blue Valley is Creating
More of Its Self-Imposed Problems**

Related to Shawnee’s fallacious assertion that no fundamental rights are at play in the Covid 19 world of parents and students, the prior mask policy of Blue Valley did not provide for any religious accommodation. Now, it claims it must enforce the Board of County Commissioners of Johnson County August 5, 2021, Public Health Order No. 001-21 – well, kind of. This order applies to “public” and “private” schools. Hey, homeschools are unaccredited private schools so now JOCO homeschooled kids are mandated to wear masks in their own home? Yep. And similar to other school districts seeking county action cover, Blue Valley now claims it must follow this county health order as though this school district is supervised by the Johnson County Commissioners. What a shell game. Even so, Blue Valley is not following that order exactly but has modified it to segregate or otherwise quarantine students based upon a Covid 19 vaccination status.

<https://www.bluevalleyk12.org/covid>.

This implicates Sections 59 and 60 in SB159 which do not allow state appropriated funds to be used to: “(3)... or refuse access to a place accessible to the general public, or *separate from others* in a place accessible to the general public, including entry, education, travel and services within this state, based on such individual's COVID-19 vaccination status” (emphasis supplied). Blue Valley, as well as every other school district, receive public funds from state appropriations which is subject to the SB159 ban on refusing student access to public education facilities or otherwise separating students “based on such [students’] vaccination status.” Blue Valley’s policy provides no due process hearing unlike KSA § 65-129c(d)(1) which provides for “a hearing in district court contesting the isolation or quarantine.” Equally problematic are the exemptions. It provides for exemptions based upon a medical status and athletic activities. It then refers to other activities described as “religious”: “c. Persons engaged in religious services, ceremonies or activities.” This provision is discriminatory on its face and actually isn’t a religious accommodation at all. It is not a provision recognizing religious beliefs but kinds of activities which are vaguely titled “religious.” This provision seems to be focused on individuals related to the rental of school facilities by churches on the weekends. Even then it would not mask-exempt individuals in rented church time when engaged in secular activities during the rental period e.g. making personal phone call or going to the bathroom. This provision is vague as well as discriminates as to which religious exercise by an individual is recognized by the government as valid which is unconstitutional.

Conclusion

So, not unlike other states, there is a battle between federal and state, state and local government, regarding who decides and how: masks and the covid 19 jab. Caught in the crossfire are parents with their children. This brief will undoubtedly be censored on Twitter and YouTube because of its message. Science is demonstrating almost weekly that masks are ineffective, Covid 19 vaccinations are exponentially expanding the world of vaccine injuries, and that God given natural immunities still trump whatever mankind thinks is better. And the cure is proving worse than the disease.

<https://theexpose.uk/2021/09/15/30k-people-died-within-21-days-of-having-a-covid-19-vaccine-in-england/> (“30,305 people died within 21 days of having a Covid-19 Vaccine”);<https://www.lifesitenews.com/news/idaho-doctor-reports-a-20-times-increase-of-cancer-in-vaccinated-patients/>. Shawnee and Blue Valley districts are not the victims in this Covid 19 world as they portend. It is the students who suffer laboring under inconsistent, arbitrary, and irrational masks mandates. Even under the KPRFA these policies directly or indirectly inhibit and constrain the free exercise of religion. They can violate the protected conscience of citizens as stated in the Kansas Bill of Rights. SB40 created a right for all of these parents to a specific process in which they could have heard individualized grievances regarding fundamental rights affected by these schools’ mask and quarantining policies. The Kansas legislature recognized those issues in SB40 and SB159 which they were entirely right and justified in enacting for the benefit of its citizens.

/s/Linus L. Baker
Linus L. Baker, KS 18197
6732 West 185th Terrace
Stilwell, KS 66085-8922
Telephone: 913.486.3913
Fax: 913.232.8734
E-Mail: linusbaker@prodigy.net
Attorney for Johnson County Plaintiffs in
21cv01942

Certificate of Service

A copy of the above was notified electronically by the Court to all parties
pursuant to Administrative Order 268;

Sam.macroberts@kansasjusticeinstitute.org
jhatley@spencerfance.com
sloverrbowman@spencerfance.com
adwuer@spencerfane.com
mhillman@bluevalleyk12.org
mbailey@polsinelli.com
Clay.Britton@ks.gov
mark.johnson@dentons.com
stephen.mcallister@dentons.com
betsey.lasister@dentons.com
lsobba@kasb.org

/s /Linus L. Baker

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

**Terri E. Baker, et al.,
Plaintiffs,**

v

Case No. 2021-CV-01942

**Blue Valley Board of Education, et al.,
Defendants.**

**ORDER ON PLAINTIFF'S MOTION TO RECUSE ASSIGNED JUDGE
PURSUANT TO K.S.A. 20-311d**

The plaintiffs in the above-captioned matter, following the procedure set out in K.S.A. 20-311d, informally requested "Division 7", which I can only presume means the district judge appointed to Division 7 of the Johnson County District Court, recuse. The judge declined, and the plaintiffs filed an affidavit in support of their motion.

Upon review, Chief Judge Thomas Kelly Ryan determined he had a conflict and could not rule on the motion. Pursuant to K.S.A. 20-311d(b), Justice Evelyn Wilson has appointed me to rule on this matter.

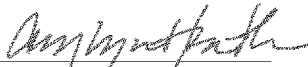
The plaintiffs allege various reasons "Division 7" should be disqualified

from hearing this matter. In this case, the Tenth Judicial District, of which “Division 7” is a part, is a named defendant in this action, specifically as to Count 9. “Division 7”, in the Case Management Order, announced it would sever Count 9 from the remainder of the complaint: “The Court actually had planned on recusing as to Count 9 and then severing the same. The Court then would request that the chief judge reassign Count 9...”

Clearly “Division 7” understood they should not be hearing a claim involving the Tenth Judicial District. However, because a judicial determination of whether claims in an action are properly before the court requires a substantive decision by the assigned judge, “Division 7” cannot make the determination to recuse on one count and then sever the very count with which it has a conflict. By necessity, this would require the judge to decide a substantive issue in the pending matter—whether a count in a petition should be severed from the others.

Because this conflict is clear, I decline to address the other issues raised by the plaintiffs. As a court operating in the Tenth Judicial District, a named defendant in this action, “Division 7” has an interest in the litigation (see K.S.A. 20-311d(c)(5)). The plaintiffs’ motion to recuse is granted.

IT IS SO ORDERED.



Amy L. Harth
Chief Judge, Sixth Judicial District

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS

ADMINISTRATIVE ORDER NO. 21-01

INTERIM PROCEDURES FOR CIVIL ACTIONS
UNDER SB 40

In 2021 SB 40, following publication in the Kansas Register, by New Sections 1(d)(3) and 2(d)(3) and Sections 6(g)(3), 8(e)(3), and 12(d)(3), the Supreme Court is authorized to “adopt emergency rules of procedure to facilitate the efficient adjudication of any hearing requested under this subsection.” In the interim, the following procedures are adopted for the 10th Judicial District:

1. Petitions filed under SB 40, New Sections 1(d)(1) and 2(d)(1) and under Sections 6(g)(1), 8(e)(1), or 12(d)(1) must be verified under oath or declaration under penalty of perjury. Petition must include name, address, telephone number, and a valid working e-mail address for the petitioner. Petition must clearly show on the face of the petition that it is filed under 2021 SB 40.

2. Such petitions must include a copy of the order(s) under which the petitioner is aggrieved clearly showing the date of adoption or issuance.

3. Such petitions must include factual allegations with specificity indicating how the petitioner is substantially burdened or inhibited by specific provision(s) of the order under consideration and the nature of its business or individual activity so burdened. The allegations must show with specificity and not by mere conclusory language, how the petitioner’s burden is substantially different from the burden upon persons or entities similarly situated who are not included on the petition.

4. Such petitions must include a specific prayer for relief. If such prayer includes injunctive relief either of a temporary or permanent nature, the petition must also include all of the factual allegations necessary to support the elements for injunctive relief.

5. Such petitioner must certify the date and time that the petition has been served *and received* by the body or entity which issued the order by which the petitioner is aggrieved. Petitioner shall provide actual notice to respondent of the filing of the petition no less than 24 hours after its filing. The respondent shall have not more than 24 hours to file and serve a verified response to the petition.

6. Such petitions must specify how the order which is the subject of the action could be more narrowly tailored to respond to the disaster emergency addressed by the order under review and suggest less restrictive means, if any, to achieve such purpose(s).

7. The petitioner must certify whether they had an opportunity to appear and be heard prior to the adoption or issuance of the order under review and, if so whether they did appear and express their aggrieved burden and whether they suggested the alternatives expressed in the petition.

8. Hearings shall be commenced in the time mandated by the statute after receipt of the petition by the Clerk of the District Court who shall promptly advise the petitioner, respondent, and District Judge of the assigned Division.


9. The respondent shall be the entity or party issuing or adopting the order under review as named in the petition. The respondent shall be notified by the petitioner and the Court of the time and date for commencement of the hearing and be given opportunity to be heard by affidavit or, if needed, testimony addressing the allegations of the petition.

10. The Court will issue its decision with findings of facts based upon verified pleadings, affidavits, sworn testimony, or documents received in evidence within the statutory time after conclusion of the hearing. The hearing timely started under the statute may be continued as necessary to hear the facts before conclusion and submission when the time starts for the Court to issue its ruling.

These rules of procedure may be modified by the assigned Judge hearing the case as necessary. They will remain in effect until such time as they are superseded by rules adopted by the Kansas Supreme Court or further Order of this Court.

IT IS SO ORDERED.

Dated this 2nd day of April 2021.


 Thomas Kelly Ryan
 Chief Judge, 10th Judicial District



**Blue Valley School District
Rules of Procedure
Pursuant to Senate Bill 40**

Under Kansas Senate Bill No. 40, the Blue Valley Board of Education has authority to take any action, issue any order, or adopt any policy in response to a COVID-19 state of disaster emergency which affects the operation of any school or attendance center of the school district.

An employee, a student or the parent or guardian of a student aggrieved by such an action taken, order issued or policy adopted by the Board of Education in response to the COVID-19 state of disaster emergency may request a hearing by the Board to contest the action within thirty (30) days of the action.

Kansas Senate Bill No. 40 further says the Board of Education may adopt rules of procedure to facilitate the efficient adjudication of any hearing requested pursuant to the law. On April 1, 2021 the Board approved the Superintendent or her designee to serve as hearing officer.

The following rules of procedure are adopted for hearings held under Senate Bill 40.

- 1) A request for hearing should be directed to the Clerk for the Board of Education, and it shall include the following:
 - a. the name of the requester,
 - b. the requester's contact information,
 - c. attendance school,
 - d. name of the aggrieved student, if filed on a student's behalf,
 - e. the specific board action that is grieved,
 - f. date of the contested action, and
 - g. a statement explaining how the action can be more narrowly tailored to respond to the state of disaster emergency addressed by the action under review and suggesting a less restrictive means, if any, to achieve such purpose.
- 2) A request for hearing will be considered received when presented to the Clerk of the Board in writing (physical or electronic) during regular business hours.
- 3) The hearing will be conducted by a hearing officer who will make findings and recommendations to the Board of Education during an open meeting within seven (7) days of the hearing.
- 4) Requests to contest the same action, order, or policy may be consolidated.
- 5) Senate Bill 40 requires that hearings shall be open to the public and may be conducted by electronic audio-visual communication.
- 6) Hearings may be conducted virtually at the discretion of the hearing officer.
- 7) Individuals present for a hearing will be expected to comply with any and all District policies and procedures currently in place.

- 8) Each party will be provided no more than 30 minutes to present their case and specify the requested resolution. Should a consolidation of requests occur, time allotted may be altered at the hearing officer's discretion and as fairness dictates.
- 9) These rules of procedure may be modified by the Superintendent or her designee as necessary.
- 10) A decision regarding the contested action will be made by the Board of Education and communicated to the requester within seven (7) days after the hearing.

JOHNSON COUNTY BOARD OF HEALTH ORDER NO. 001-21

Applicable within the entirety of Johnson County, Kansas

This Public Health Order is issued by the Board of County Commissioners of Johnson County, Kansas, sitting as the County Board of Health, on August 5, 2021 and is effective the 9th day of August 2021, at 12:01 A.M. to ensure elementary level schools in Johnson County can safely provide in-person learning and to slow the spread of COVID-19 in Johnson County elementary level schools, pursuant to the authority provided in K.S.A. 65-119 and other applicable laws or regulations.

The Board, sitting and acting as the County Board of Health, upon a motion duly made, seconded, and carried adopted the following Order, to-wit:

WHEREAS, COVID-19 is a respiratory disease that spreads easily from person to person and may result in serious illness or death among some who are infected; and

WHEREAS, the United States Department of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 34,722,631 cases of the illness and more than 609,853 deaths as a result of the illness across the United States; and

WHEREAS, on March 19, 2020, the Board of County Commissioners of Johnson County issued a state of local disaster emergency declaration, which was renewed and extended on May 28, 2020, and which remains in place at the time of this Order; and

WHEREAS, as of this date, in Kansas there have been 330,932 reported positive cases of COVID-19 spread among all 105 counties, including 5,247 deaths; and

WHEREAS, COVID-19 has resulted in 48,983 reported positive cases of COVID-19 in Johnson County and the deaths of 679 Johnson County residents; and

WHEREAS, the highly transmissible Delta variant of COVID-19 is now the dominant strain in Johnson County, resulting in a rapid increase in new cases and numerous outbreaks associated with summer camps and school-age programs; and

WHEREAS, children under the age of 12 are not currently eligible for vaccines and approximately less than forty percent (40%) of children aged 12-17 years in Johnson County have been fully vaccinated against COVID-19; and

WHEREAS, K-12 students benefit from in-person learning and interactions with others; and

WHEREAS, under state law, children between the ages of 7 and 18 are required to attend school; and

WHEREAS, safely returning to in-person classes and keeping public and private K-12 schools open in Johnson County is of the highest priority for students, parents, schools, and the entire community; and

WHEREAS, Centers for Disease Control and Prevention ("CDC") now recommends universal indoor masking for all teachers, staff, students, and visitors to K-12 schools regardless of vaccination status; and

WHEREAS, wearing face masks while indoors at school will protect the health of Johnson County elementary level students while they are awaiting vaccinations; and

WHEREAS, wearing a mask or other face covering in school gets and keeps children in school and is an effective means to protect students and mitigate the spread of COVID-19 while in school; and

WHEREAS, the intent of this Order is not to deprive any person or entity of any rights protected by the United States Constitution, the Kansas Constitution, or any other law, but merely to set forth restrictions which would best protect Johnson County schools, students, faculty, and staff against the community spread of COVID-19; and

WHEREAS, the Board of County Commissioners of Johnson County, as the County Board of Health, and the Local Health Officer are authorized and required, pursuant to K.S.A. 65-119, to immediately exercise and maintain supervision over known or suspected cases of any infectious or contagious disease during its continuance and to see that all such cases are properly handled, and the Local Health Officer is to use all known measures to prevent the spread of any infectious, contagious, or communicable disease;

WHEREAS, the Local Health Officer is appointed by the Board of County Commissioners of Johnson County pursuant to K.S.A. 65-201, and the Local Health Officer proposes and recommends that masks or other face coverings be worn by students through and including 6th grade while inside school buildings to slow the spread of COVID-19 in Johnson County schools; and

WHEREAS, Johnson County Department of Health and Environment (JCDHE) works in partnership with Johnson County public and private schools to keep our schools open so that our children can learn and benefit from interactions with others. JCDHE will collaborate with and provide guidance to schools on the wearing of masks while in school; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the County's responsibility to provide for and ensure the health, safety, security, and welfare of the people of Johnson County, requiring that masks or other face coverings be worn by students through and including 6th grade while inside school buildings is a highly effective measure that can be taken to slow and reduce the spread of COVID-19 in our schools and community; and

NOW, THEREFORE, BE IT ORDERED by the Board of County Commissioners of Johnson County, Kansas, sitting and acting as the County Board of Health, that:

Section I. Maintaining Healthy School Environments for Elementary Level Students

1. To ensure that schools may operate as safely as possible, public and private schools for students up to and including 6th grade shall require the following:
 - a. Masks or other face coverings are required for all children while inside a school building where any students through and including 6th grade attend class, unless actively eating or drinking. This requirement includes children in higher grades who attend school in buildings where children in 6th or lower grades also attend school unless 6th graders are physically separated from higher grades throughout the school day.
 - b. Masks or other face coverings are required for all faculty, staff, and visitors while inside a school building where any students through and including 6th grade attend class, unless actively eating or drinking.
 - c. Unless otherwise required by the school, children, faculty, staff, and visitors do not need to wear masks when outdoors on school property. This includes students, faculty and staff participating in elementary level recess.
 - d. All bus riders must wear a mask when riding on a school bus unless documentation has been submitted to the school for a medical mask exemption.
2. The following individuals are exempt from wearing masks or other face coverings while inside school buildings:
 - a. Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
 - i. For students, faculty and staff, documentation of the above condition should be provided to the appropriate school officials pursuant to school guidelines.
 - b. Persons communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication.
 - c. Persons engaged in religious services, ceremonies or activities.
 - d. Persons engaged in activities and athletics inside school buildings, who should follow KSHSAA and/or school guidelines.

3. "Mask or other face covering" means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A mask or other face covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. A mask or other face covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels.

Section II. Lawful Order. This Order is a lawfully issued order pursuant to K.S.A. 65-202 and K.S.A. 65-119(a) and is also a "public health directive" as identified in KSA 60-5502. This Order shall apply to all public and private K-12 schools within Johnson County. The Board of Education for each unified school district within Johnson County and the respective governing

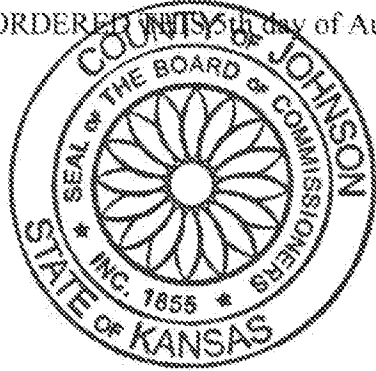
body of each K-12 private school within Johnson County shall be responsible for enforcement of this Order.

Section III. Review by Board of County Commissioners. The Board of County Commissioners may review, amend, or revoke this Order at any time.

Section IV. Severability. If any portion of this Order is found or determined to be invalid, such finding, or determination shall only affect the portion of the Order that is at issue and shall not affect the validity of the remainder of the Order.

Section V. Effective Date; Conclusion. This Order is effective at 12:01 A.M. on Monday, the 9th day of August 2021, and shall remain in effect through 11:59 P.M. on May 31, 2022, unless it is amended, revoked, or replaced.

IT IS SO ORDERED THIS 9th day of August, 2021.



BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY, KANSAS

[Handwritten Signature]
Ed Eilert, Chairman

ATTEST:

[Handwritten Signature]
Lynda Sader
Deputy County Clerk

APPROVED AS TO FORM:

[Handwritten Signature]
Peggy A. Trent
Chief Counsel

Approved 5-2 (CO MA)

FILED

AUG 05 2021

DEPUTY COUNTY CLERK
JOHNSON COUNTY KANSAS

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL DIVISION

)
 Laura Klingensmith, individually,)
)
 Bradley Nichols, individually and as parent)
 of A.N., 10336 Rosehill Rd)
 Overland Park, KS 66215,)
)
 Jason Stenberg, individually and as parent)
 of L.S. 6th and J.S. 25835 W 77th St)
 Olathe, KS 66227,)
)
 Laura Alexcites, individually and as parent)
 of J.A. and J.A. XX/XX/10)
 26249 W 110th Ter)
 Olathe, KS 66061,)
)
 John Paul Cooley, individually and as)
 parent of L.C.)
 5700 W 81st Terrace)
 Prairie Village, KS 66208,)
)
 Johann Schart, individually and as parent of,)
 E.M.L. and A.L.)
 17189 S. Pratt St.)
 Gardner, KS 66030)
)
 Emily Gurney, individually and as parent)
 of L.G and C.G.)
 21625 S Main St)
 Spring Hill, KS 66083,)
)
 Brittany Garber, individually and as parent)
 of L.G. and L.G.)
 16249 S. Sunset St.)
 Olathe, KS 66962,)
)
 Tiffany Knaebel, individually and as parent)
 of K.K.)
 15380 W. 231 St.)
 Spring Hill, KS 66083,)
)
 Dawn Teager, individually and as parent of)
 P.T.)
 19598 S Clearview Rd)
 Spring Hill, KS 66083,)

Case No. _____
 Division No. ____
 Pursuant to K.S.A. Chapter 60
 Jury Trial Demanded

)
Chad Robbins, individually and as parent of)
K.R. and R.R.)
26026 W 223 St.)
Spring Hill, KS 66083,)

)
Kevin Combs, individually and as parent of)
A.M.C. and C.S.C.)
12281 S. Appleridge Ln)
Olathe, KS 66061,)

)
Shad Thompson, individually and as parent)
of K.A.T.)
12308 S Logan St)
Olathe KS 66061,)

)
Brittany Hageman, individually and as)
parent of A.H.)
21019 Bittersweet Dr.)
Lenexa KS 66220,)

)
Alison Phillips, individually and as parent)
of S.P.)
6301 Mize Rd.)
Shawnee Kansas 66226,)

)
Threasa Lang, individually and as parent of)
H.L. and O.L. 4/2/14)
478 N. Birch St.)
Gardner, KS 66030,)

)
Sherelle Witt, individually and as parent of)
I.N.F. and C.R.F.)
9815 Evening Star Rd.)
Eudora, KS 66025,)

)
Dustin Harris, individually and as parent of)
B.H. and K.H.)
21807 W. 53rd St)
Shawnee, KS 66226,)

)
Gloria Close, individually and as parent of,)
C.C. and I.C.)
26380 W Cedar Niles Circle)
Olathe, KS 66061,)

AJ Vanderweide, individually and as parent)
of A.V. and O.V.)
5524 Lewis Dr.)
Shawnee, KS 66226.)
)
Derc Albrecht, individually and as parent of)
K.A. and H.A. XX/XX/14)
2725 W Wabash St.)
Olathe, KS 66061,)
)
Denise Smith, individually and as parent of)
G.S., L.S. and A.S.)
10105 Barton St.)
Overland Park, KS 66214,)
)
)
)
)
Plaintiffs,)
)
)
vs.)
)
)
JOHNSON COUNTY BOARD OF)
COUNTY COMMISSIONERS,)
)
)
Defendants.)

VERIFIED PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER AND REQUEST FOR PERMANENT INJUNCTION

PLAINTIFFS, by and through counsel, Andrew B. Protzman and the Protzman Law Firm, LLC,
state:

NATURE OF ACTION

Plaintiffs are parents, children, and visitors of Johnson County schools where students grade pre-kindergarten through sixth grade attend class and bring this action on behalf of themselves and their children. Johnson County Board of Health Order No. 001-21 is unconstitutional and in excess of statutory authority.

On August 9, 2021, Johnson County Board of Health Order No. 001-21 became effective. This order purports to require all students, faculty, staff, and visitors to comply with mandatory mask requirements while indoors at a Johnson County school building where pre-kindergarten to sixth grade children attend class. Plaintiffs challenge the authority of the Johnson County Board of Health to issue Order No. 001-21, the constitutionality of Senate Bill 40, and Defendants violation of the Kansas Constitution.

HISTORY OF MASK RECOMMENDATIONS

Masking recommendations by the Centers for Disease Control and Prevention (“CDC”) have varied dating back to 2004, when the CDC published guidance that no recommendation can be made that asymptomatic individuals wear masks in the community.¹ In April 2009, the CDC recommended that *if* facemasks are to be used, they should be used in conjunction with other preventive measures.² In February 2020, Dr. Anthony Fauci, Director of the US National Institute of Allergy and Infectious Diseases and chief medical advisor to the President, advised that “the typical mask you buy in the drug store is not really effective in keeping out [the] virus which is small enough to pass through the material.” Again, in February 2020, the CDC posted on Twitter that it did not currently recommend the use of facemasks to help prevent the novel coronavirus.³

The US Surgeon General posted on Twitter (later deleted) that masks were not effective in preventing coronavirus.⁴ Following the Federal declaration of a public health emergency in March 2020, the CDC did not recommend masking due to a shortage of N95 masks needed for front-line health care

¹<https://web.archive.org/web/20050206094532/https://www.cdc.gov/flu/professionals/infectioncontrol/maskguidance.htm>

² <https://web.archive.org/web/20090501211839/https://www.cdc.gov/h1n1flu/masks.htm>

³https://twitter.com/CDCgov/status/1233134710638825473?ref_src=twsrc%5Etfw%7Ctwcamp%5Etwteembed%7Ctwtr%5E1233134710638825473%7Ctwgr%5E%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.rt.com%2Foped%2F530567-cdc-fauci-covid-mask-guidance-history%2F

⁴ https://web.archive.org/web/20200229123317/https://twitter.com/Surgeon_General/status/1233725785283932160

workers. In April 2020, the CDC changed its recommendations to suggest that Americans wear cloth facemasks and continued to recommend the use of facemasks until February 2021.

The Confusing and Conflicting Positions on Masking

In March 2021, the CDC announced that vaccinated individuals did not need to wear a facemask when indoors and around other vaccinated individuals. In April 2021, the CDC then said that fully vaccinated people could go without masks at small outdoor gatherings but should wear a mask when they are in large gatherings. In May 2021, the CDC said that those who received full vaccinations did not need to maintain social distance or wear masks indoors or outdoors.

In July 2021, the CDC recommended that fully vaccinated teachers and students don't need to wear masks inside school buildings, and Dr. Fauci reiterated the CDC recommendations and stated that those in high transmission areas should mask up anyway. The CDC pivoted when the Delta variant of SARS-CoV-2 emerged as the dominant strain, and on July 27, 2021, the CDC recommended that fully vaccinated individuals should resume wearing a mask. On July 26, 2021, in conjunction with the CDC's announcement that the Real Time – PCR test's emergency use authorization will be discontinued, the "CDC encourage[d] laboratories to consider adoption of a multiplexed method that can facilitate detection and differentiation of SARS-CoV-2 and influenza viruses."⁵ Put another way, the tests that have been conducted using this method since February 2020 have not necessarily been reporting Covid-19 cases, but easily could have been reporting a case of the flu.

PRELIMINARY STATEMENT

Children are beginning their fall semester of the 2021-2022 school year; school officials, parents and governing bodies are all scrambling to provide a method for returning to in-person class, all while the debate over masking continues. Many public health officials are guided by the ever-changing CDC

⁵ https://www.cdc.gov/csels/dls/locs/2021/07-21-2021-lab-alert-Changes_CDC_RT-PCR_SARS-CoV-2_Testing_1.html

recommendations while knowledge of COVID-19 develops, and the efficacy of vaccines is evaluated. Masking recommendations are based on medical assumptions not factual data.

Despite the lack of data supporting widespread use of masks to prevent transmission of COVID-19, Defendant Board of County Commissioners, sitting as the Johnson County Board of Health, enacted Johnson County Board of Health Order 21-001 (“Order No. 001-21”) that mandates masking for all children, ages pre-kindergarten through sixth grade, while indoors at a Johnson County school building and for all persons inside a school building.

Enacted on August 5, 2021, Order No. 001-21 purports to be authorized by K.S.A. § 65-202, K.S.A. § 65-119(a), and K.S.A. 60-5502; however, Order No. 001-21 is based on language in Kansas Senate Bill 40 (“SB40”). SB40 was enacted in response to the Kansas Governor’s declaration of an emergency due to COVID-19. SB40 authorizes county commissioners to issue mask mandates only during a public health emergency declared by the Governor, subject to the requirement of expedited hearings to challenge the orders of the Governor or a local authority.

Not only should Order No. 001-21 be invalidated based on procedural missteps, it is also the unconstitutional exercise of governmental power, which is neither narrowly tailored nor furthers a compelling state interest in preventing the spread of COVID-19. Order No. 001-21 forces healthy individuals to use a medical device to prevent the spread of a virus for which they show no indication of infection. The order does not require a finding that an individual has symptoms of COVID-19 before being required to wear a mask. Furthermore, Order No. 001-21 encroaches on Plaintiffs’ rights as parents to control the care and upbringing of their own children by requiring compliance with an order that has no basis in medical science.

Further, Order No. 001-21 violates the Kansas Constitution in a variety of ways. Defendant, through their enactment of Order No. 001-21, has violated Plaintiffs’ Due Process rights guaranteed to them under the Section 1 of the Kansas Constitution Bill of Rights. Further, masks have become a

symbol of speech. Those who are required to wear a mask are effectively compelled to make a political statement against their deeply held personal beliefs in violation of their right to free speech guaranteed by § 11 of the Kansas Constitution Bill of Rights. For all these reasons, Order No. 001-21 must be invalidated.

PARTIES

1. Plaintiff Laura Klingensmith is an individual who anticipates being a visitor in a Johnson County School Building where pre-kindergarten through sixth graders attend class.
2. Plaintiff Bradley Nichols, is an individual and parent of A.N. in 8th grade with a mask exemption in a school building where 6th graders are present and resides at 10226 Rosehill Rd., Overland Park, KS 66215.
3. Plaintiff Jason Stenberg is an individual and parent of L.S. in 6th grade XX/XX/09, and resides at 25835 W 77th St., Olathe, KS 66227.
4. Plaintiff Laura Alexcites is an individual and parent of J.A., XX/XX/13 in pre-kindergarten, J.A. XX/XX/06 in 5th grade, J.A. XX/XX/10 in 2nd grade and resides at 26249 W 110th Ter., Olathe, KS 66061.
5. Plaintiff John Paul Cooley is an individual and parent of L.C. XX/XX/12 in 4th grade with a mask exemption and resides at 5700 W 81st Terrace, Prairie Village, KS 66208.
6. Plaintiff Johann Schart is an individual and the parent of A.S, in 5th grade, and E.L. in 7th grade in a school building where 6th graders are present and resides at 17189 S. Pratt St. Gardner, KS 66030.
7. Plaintiff Emily Gurney is an individual and the parent of L.G. XX/XX/13 in 2nd grade, C.G. XX/XX/15 in 1st grade who has mask exemption and resides at 21625 S Main St., Spring Hill, KS 66083.

8. Plaintiff Brittany Garber is an individual and the parent of L.G., in 4th grade, L.G. in 2nd grade and resides at 16249 S. Sunset St., Olathe, KS 66962.
9. Plaintiff Tiffany Knaebel is an individual and the parent of K.K. XX/XX/08 in 7th grade with a mask exemption in a school building where 6th graders are present and resides at 15380 W. 231 St., Spring Hill, KS 66083.
10. Plaintiff Dawn Teager is an individual and the parent of P.T. XX/XX/12 in 3rd grade with a mask exemption and resides at 19598 S Clearview Rd., Spring Hill, KS 66083.
11. Plaintiff Chad Robbins is an individual and the parent of K.R. XX/XX/14 in 2nd grade, R.R. XX/XX/15 in kindergarten who has mask exemption and resides at 26026 W 223 St., Spring Hill, KS 66083.
12. Plaintiff Kevin Combs is an individual and the parent of A.C. XX/XX/13, C.S.C. XX/XX/13, L.D.C. XX/XX/14 and resides at 12281 S. Appleridge Ln. Olathe, KS 66061.
13. Plaintiff Shad Thompson is an individual and the parent of K.T. in 5th grade with a mask exemption and resides at 12308 S Logan St., Olathe KS 66061.
14. Plaintiff Brittany Hageman is an individual and the parent of A.H. in 3rd grade, R.H. in 1st grade who has mask exemption and resides at 21019 Bittersweet Dr., Lenexa KS 66220.
15. Plaintiff Alison Phillips is the parent of S.P. XX/XX/07 in 7th grade in a school building where 6th graders are present and resides at 6301 Mize Rd., Shawnee Kansas 66226.
16. Plaintiff Threasa Lang is an individual and the parent of H.L. XX/XX/10, in 6th grade, O.L. XX/XX/14 in 2nd grade and resides at 478 N. Birch St., Gardner, KS 66030.
17. Plaintiff Sherelle Witt is an individual and the parent of I.F. XX/XX/04, C.F. XX/XX/09 and resides at 9815 Evening Star Rd., Eudora, KS 66025.
18. Plaintiff Dustin Harris is an individual and the parent of B.H. XX/XX/09, K.H. XX/XX/09, J.H. XX/XX/08 and resides at 21807 W. 53rd St., Shawnee, KS 66226.

19. Gloria Close, individually and as parent of, C.C. XX/XX/14 in 2ND grade, I.C. XX/XX/11 in 4TH grade with a mask exemption and resides at 26380 W Cedar Niles Circle, Olathe, KS 66061.
20. AJ Vanderweide, individually and as parent of A.V. XX/XX/10, in 5TH grade, O.V. XX/XX/16 in 1ST grade 5524 Lewis Dr., Shawnee, KS 66226.
21. Derc Albrecht, individually and as parent of K.A. XX/XX/10 in 5TH grade, H.A. XX/XX/14 in 2ND grade, and resides at 2725 W Wabash St., Olathe, KS 66061.
22. Denise Smith, individually and as parent of G.S. XX/XX/10 6TH, L.S. XX/XX/12 in 4TH grade, A.S. XX/XX/14, in 2nd grade with a mask exemption and resides at 10105 Barton St., Overland Park, KS 66214.
23. Defendant Board of County Commissioners of Johnson County, Kansas (“BOCC”) is the governing body for Johnson County, Kansas, a political subdivision of the State of Kansas, located at 111 S. Cherry Street, Suite 1200, Olathe, Kansas 66061.
24. Defendant BOCC sits as the Johnson County Board of Public Health as authorized by K.S.A. § 65-119.

STANDING

25. Plaintiffs and their children have standing to challenge Order No. 001-21 because they are subject to the order as pupils, parents, and visitors in a Johnson County school building where pre-kindergarten to sixth grade children attend class.
26. Parents have standing to challenge any action that infringes on their right to control the care and upbringing of their children. K.S.A. 38-141(b).
27. Plaintiffs Emily Gurney and Dawn Teager have standing under both K.S.A. § 38-141(b) and K.S.A. § 72-3403, *et. seq.*, The Special Education for Exceptional Children Act, if SB40 is held constitutional, K.S.A. § 65-201(d)(1) provides all Plaintiffs standing to challenge Public Health Order No. 001-21.

JURISDICTION AND VENUE

28. Jurisdiction and venue are proper in Johnson County because Plaintiffs are residents of Johnson County and/or have a least one child enrolled in a school effected by Order No. 001-21.

FACTUAL BACKGROUND

COVID-19 Pandemic

29. “COVID-19 public health emergency” means the state of disaster emergency declared for the state of Kansas on March 12, 2020, any subsequent orders or amendments to such orders and any subsequent disaster emergency declared for the State of Kansas regarding the COVID-19 pandemic. K.S.A. § 60-5502 (d).
30. In March 2020, Governor Laura Kelly issued a statewide order requiring the closure of businesses, schools, and other non-essential businesses, and included a directive to wear face coverings under certain conditions. This order expired on June 15, 2021.
31. Governor Kelly’s statewide mask mandate provided counties the authority to opt out of its requirements, and several counties did opt out. This statewide mandate ended June 15, 2021.
32. In the months that followed, Kansas citizens were forced to stay home, and children were forced to attend school remotely or, eventually, through a hybrid in-person procedure with a mask requirement or remotely for the remainder of 2020 and the spring semester of 2021.
33. Many staff, visitors, and children attending the hybrid in-person school were required to wear face coverings while at the school and in the classroom.
34. The Kansas Legislature authorized the Secretary of Health and Environment to “designate such diseases as are infectious or contagious in their nature.” K.S.A. § 65-128(a).

35. The Secretary is authorized to issue orders and adopt rules and regulations “as may be medically necessary and reasonable to prevent the spread and dissemination of diseases injurious to the public health, including, but not limited to providing for the testing for such diseases and the isolation and quarantining of persons *afflicted with or exposed to such diseases.*” K.S.A. § 65-128(b).
36. The Kansas Supreme Court has upheld the constitutionality of K.S.A. § 65-128. See *Ex parte McGee*, 105 Kan. 574, 185 P. 14, 14 (1919).
37. K.S.A. § 65-128(b) authorizes the Secretary to act regarding an *individual* who is suspected of being infected with an infectious or contagious disease but does not provide authority for the Secretary to impose requirements such as mandatory masking on an otherwise healthy person.
38. The legislature provides for a State Board of Education to have general supervision of public schools, educational institutions and all the educational interests of the State, except educational functions delegated by law to the State Board of Regents. The State Board of Education shall perform such other duties as may be provided by law. Kan. Const. art. VI, § 2(a).
39. According to the State Board of Education Act, K.S.A. § 72-243, “[t]he State Board of Education shall have the powers that it is specified to have in the constitution as such powers are more specifically described and defined by law.” K.S.A. § 72-245.
40. “The superintendent of schools shall have charge and control of the public schools of the school district, subject to the orders, rules and regulations of the Board of Education.” K.S.A. § 72-1134(c).
41. Neither the Secretary of Health and Environment nor the Kansas Board of Education “in the absence of legislative authority, ... has power to exclude from such schools a child possessing the requisite qualifications as to age and residence.” *Osborn v. Russell*, 64 Kan. 507, 68 P. 60, 61 (1902).
42. On March 24, 2020, SB40 became effective, modifying, *inter alia*, K.S.A. § 65-101 and K.S.A. § 65-201.

SB40 Amendments to K.S.A. § 65-101

43. Prior to the enactment of SB40, K.S.A. § 65-101 provided in relevant part:

(a) The secretary of health and environment shall exercise general supervision of the health of the people of the state and may

...

(2) investigate the causes of disease, including especially, epidemics and endemics, the causes of mortality and effects of locality, employments, conditions, food, water supply, habits and other circumstances affecting the health of the people of this state and the causes of sickness and death

...

(5) take action to prevent the introduction of infectious or contagious disease into this state and to prevent the spread of infectious or contagious disease within this state;

...

(b) The secretary of health and environment may adopt rules and regulations necessary to carry out the provisions of paragraphs (1) through (6), inclusive, of subsection (a). In addition to other remedies provided by law, the secretary is authorized to apply to the district court, and such court shall have jurisdiction upon a hearing and for cause shown to grant a temporary or permanent injunction to compel compliance with such rules and regulations.

K.S.A. § 65-101

44. SB40 added the following provision to K.S.A. § 65-101:

(c) In the event of a state of disaster emergency declared by the governor pursuant to K.S.A. § 48-924, and amendments thereto, or a state of local disaster emergency declared pursuant to K.S.A. § 48-932, and amendments thereto, the legislature may revoke an order issued by the secretary to take action related to such disaster emergency as provided in this subsection. Such order may be revoked at any time by concurrent resolution of the legislature or, when the legislature is not in session or is adjourned during session for three or more days, such order may be revoked by the legislative coordinating council with the affirmative vote of five members thereof.

KS LEGIS 7 (2021), 2021 Kansas Laws Ch. 7 (S.B. 40).

SB40 Amendments to K.S.A. § 65-201

45. K.S.A. § 65-201 prior to the SB40 amendments provided in relevant part:

(a) The board of county commissioners of each county shall act as the county board of health for the county. Each county board shall appoint a person licensed to practice

medicine and surgery, preference being given to persons who have training in public health, who shall serve as the local health officer and who shall act in an advisory capacity to the county board of health. The appointing authority of city-county, county or multicounty health units with less than 100,000 population may appoint a qualified local health program administrator as the local health officer if a person licensed to practice medicine and surgery or person licensed to practice dentistry is designated as a consultant to direct the administrator on program and related medical and professional matters. The local health officer or local health program administrator shall hold office at the pleasure of the board.

(b) Any order issued by the local health officer, including orders issued as a result of an executive order of the governor, may be reviewed, amended or revoked by the board of county commissioners of the county affected by such order at a meeting of the board. Any order reviewed or amended by the board shall include an expiration date set by the board and may be amended or revoked at an earlier date by a majority vote of the board.

K.S.A. § 65-201

46. K.S.A. § 65-201 as amended by SB40 added:

(b)(1) Except as provided in paragraph 2,

...

(2) If a local health officer determines it is necessary to issue an order mandating the wearing of face masks, limiting the size of gatherings of individuals, curtailing the operation of business, controlling the movement of the population of the county or limiting religious gatherings, the local health officer shall propose such an order to the board of county commissioners. At the next regularly scheduled meeting of the board or at a special meeting of the board, the board shall review such proposed order and may take any action related to the proposed order the board determines is necessary. The order shall become effective if approved by the board or, if the board is unable to meet, if approved by the chairperson of the board or the vice chairperson of the board in the chairperson's absence or disability.

...

(d)(1) Any party aggrieved by an order issued pursuant to subsection (b)(2) may file a civil action in the district court of the county in which the order was issued within 30 days after such order is issued. Notwithstanding any order issued pursuant to K.S.A. 2020 Supp. 20-172(a), and amendments thereto, the court shall conduct a hearing within 72 hours after receipt of a petition in any such action. The court shall grant the request for relief unless the court finds such order is narrowly tailored to the purpose stated in the order and uses the least restrictive means to achieve such purpose. The court shall issue an order on such petition within seven days after the hearing is conducted. If the court does not issue an order on such petition within seven days, the relief requested in the petition shall be granted.

(2) Relief under this section shall not include a stay or injunction concerning the contested action that applies beyond the county in which the action was taken.

(3) The supreme court may adopt emergency rules of procedure to facilitate the efficient adjudication of any hearing requested under this subsection, including, but not limited to, rules for consolidation of similar hearings.

KS LEGIS 7 (2021), 2021 Kansas Laws Ch. 7 (S.B. 40), effective March 25, 2021

SB40 Has Been Held Unconstitutional

47. On May 28, 2021, a mask mandate issued by Shawnee Mission School District was challenged in Johnson County in *Butler v. Shawnee Mission School District*, 21-CV-2385. This case directly challenged the constitutionality of SB40.
48. On July 8, 2021, Judge Hauber, found SB40 unconstitutional as a legislative overreach into the judiciary, violating the separation of powers. The Court found “SB40, particularly its enforcement provision, unconstitutionally deprives the relevant governmental units of due process while also violating the constitutional separation of powers between the judicial and legislative branches. Actions filed pursuant to the same, including the instant one, are hereby determined to be unenforceable, regardless of the merits.” Judgment and Final Order After Intervention by the Kansas Attorney General (“JE”), [Doc 19].
49. Judge Hauber recognized that “SB40 does contain a severability clause in § 14 to prevent the invalidity of other portions of the act if any portion of the same is declared unconstitutional or invalid. But here, the enforcement provisions *are* the Act. They are integral to the entire legislative scheme.” JE, p. 26. (Emphasis in original).
50. “Because SB40 disregards the traditional role of the judiciary, it cannot be severable from these other provisions. *See State ex rel. Morrison*, 285 Kan. 875, 913 (finding that severability was not possible because judicial trigger provision in the act itself answered the severability question).” JE p. 26-7.
51. The portions of K.S.A. § 65-201, as amended by SB40, are unconstitutional based on Judge Hauber’s ruling and the savings clause does not save the non-offending provisions of K.S.A. 60-201 as modified by SB40.

52. On August 24, 2021, the Kansas Supreme Court granted a stay of Judge Hauber’s decision. The current status of this legislation is unsettled, and many Kansans await the Court’s decision regarding the Constitutionality of SB40 as it amends K.S.A 65-201.

Johnson County Board of Health Order No. 001-21

53. On August 5, 2021, the BOCC held a public hearing on Johnson County Board of Health Order No. 001-21⁶, drafted pursuant to K.S.A. 65-201, K.S.A. 65-119, K.S.A. 60-5502 “or other applicable laws or regulations” to facilitate the return of children to school for in person instruction. Attached as Exhibit 1.

54. During that hearing, Dr. Joseph Lemaster, the Local Health Officer for Johnson County, Kansas, described Order No. 001-21 as a “targeted public health intervention focused on students that currently do not have access to vaccines.”

<https://boccmeeetings.jocogov.org/OnBaseAgendaOnline/Meetings/ViewMeeting?id=6485&doctype=3>

55. Public Health Order No. 001-21 provides:

Section I. Maintaining Healthy School Environments for Elementary Level Students

1. To ensure that schools may operate as safely as possible, public and private schools for students up to and including 6th grade shall require the following:

- a. Masks or other face coverings are required for all children while inside a school building where any students through and including 6th grade attend class, unless actively eating or drinking. This requirement includes children in higher grades who attend school in buildings where children in 6th or lower grades also attend school unless 6th graders are physically separated from higher grades throughout the school day.
- b. Masks or other face coverings are required for all faculty, staff and visitors while inside a school building where any students through and including 6th grade attend class, unless actively eating or drinking.

1. ⁶ “Public health directives” means . . . any lawful order or proclamation issued under authority of the Kansas emergency management act, and amendments thereto, by a board of county commissioners, the governing body of a city or a local health officer. K.S.A. § 60-5502(j).

- c. Unless otherwise required by the school, children, faculty, staff, and visitors do not need to wear masks when outdoors on school property. This includes students, faculty and staff participating in elementary level recess.
 - d. All bus riders must wear a mask when riding on a school bus unless documentation has been submitted to the school for a medical mask exemption.
2. The following individuals are exempt from wearing masks or other face coverings while inside school buildings:
- a. Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
 - i. For students, faculty and staff documentation of the above condition should be provided to the appropriate school officials pursuant to school guidelines.
 - b. Persons communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication.
 - c. Persons engaged in religious services ceremonies or activities.
 - d. Persons engaged in activities and athletics inside school buildings, who should follow KSHSAA and/or school guidelines.
3. "Mask or other face covering" means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A mask or other face covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. A mask or other face covering may be factory-made, sewn by hand or can be improvised from household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels.

Section II. Lawful Order. This Order is a lawfully issued order pursuant to K.S.A. § 65-202 and K.S.A. § 65-119(a) and is also a "public health directive" as identified in K.S.A 60-5502. This Order shall apply to all public and private K- 12 schools within Johnson County. The Board of Education for each unified school district within Johnson County and the respective governing body of each K-12 private school within Johnson County shall be responsible for enforcement of this Order.

BOCC Order No. 001-21. Exhibit 1.

56. Order No. 001-21 was enacted on August 5, 2021 and became effective on August 9, 2021.

57. The BOCC directed public, private and parochial schools mandate all persons wear a face mask while inside a Johnson County school building where children in grades pre-kindergarten through sixth grade attend class, unless the person is actively eating or drinking or qualifies for an exemption.

58. Order No. 001-21 unconstitutionally commanded local schools or school districts to implement a mask mandate for all facilities where any student sixth grade or below attend class, usurping the power of the local board of education. K.S.A. 72-1138(e)(2).
59. All children, faculty, staff or visitor entering a pre-kindergarten through sixth grade school building in Johnson County are required to wear masks pursuant to this unconstitutional authority.
60. On March 25, 2021, a Johnson County Public Health Order, issued by the Johnson County Local Health Officer, defined a “mask or other face covering” to include something “*improvised from household items such as a scarfs, bandanas, t-shirts, sweatshirts, or towels.*”

Children have a low risk of death from COVID-19

61. The death of any child is a tragedy.
62. To date, of the 5,581 deaths in Kansas, only 2 of the deaths were of children ages 0-9. As published by the Kansas Department of Health and Environment, a total of 0.0% of the total Covid related deaths.⁷
63. To date, out of the 5,581 deaths, only 12 were persons ages 18-24. A total of 0.2% of the total Kansas Covid-related deaths.
64. The Kansas Department of Health and Environment has no reported data for deaths of persons ages 10-17.
65. Kansas’s experience is consistent with nationwide data. The CDC reports 385 deaths nationally in children under 18 years old from COVID-19 out of more than 54,000 deaths from all causes in that age bracket. (CDC, Deaths involving coronavirus disease 2019 (COVID- 19), pneumonia, and influenza reported to NCHS by time-period, jurisdiction of occurrence, sex and age-group, Aug. 18,

⁷ Unless otherwise noted, this Petition cites statewide statistics reported on the Kansas Department of Health and Environment website, available at <https://www.coronavirus.kdheks.gov/160/COVID-19-in-Kansas>.

2021, available at https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm (last visited Aug. 25, 2021)); see also, Marty Makary, Opinion, The Flimsy Evidence Behind the CDC's Push to Vaccinate Children, WALL ST. J. (July 19, 2021), <https://on.wsj.com/2VYqit1> (In the United States, less than 350 children “under 18 have died with a Covid diagnosis code in their record.”).

66. By contrast, during that same time period, the CDC reports 1,381 deaths of children under 18 years old involving pneumonia, influenza, or COVID-19, meaning that approximately 1,075 deaths of children under 18 years old involved pneumonia or influenza, but not COVID-19. CDC, Deaths involving coronavirus disease 2019 (COVID- 19), pneumonia, and influenza reported to NCHS by time-period, jurisdiction of occurrence, sex and age-group, Aug. 18, 2021, available at https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm (last visited Aug. 25, 2021).
67. The CDC's current best estimate scenario assesses the infection fatality rate to be 0% for 0-17 year olds and to be 0.05% for 18-49 year olds (and, given that COVID-19 risk is more serious as individuals age, 0.05% is likely far too high for 18- and 19-year-olds). CDC, COVID- 19 Pandemic Planning Scenarios (last updated Mar. 19, 2021), <https://bit.ly/3AyuiiU>.
68. Data from the United Kingdom regarding fatality rates from the delta variant show the case fatality rate from delta is lower than other variants, and it is near 0.0% for those under fifty years old. See PUB. HEALTH ENG., SARS-COV-2 VARIANTS OF CONCERN AND VARIANTS UNDER INVESTIGATION IN ENGLAND: TECHNICAL BRIEFING 20, at 14 tbl.4 (Aug. 6, 2021); see id. at 18 tbl.5 (showing that only 48 of the 147,612 unvaccinated people under 50 who were infected with the Delta variant died (0.03%)).

Low risk of children's hospitalization due to Covid-19

69. COVID-19 “infection in children is generally characterized by mild illness. Only a minority of children require hospitalization ...” Zoe Hyde, Perspective, COVID-19, Children and Schools: Overlooked and at Risk, 213 MED. J. AUSTL. 444, 444 (2020); see Children, School and COVID-

- 19, NAT'L INST. PUB. HEALTH & ENV'T (last updated July 14, 2021), <https://www.rivm.nl/en/coronavirus-covid-19/children-and-covid-19> (“Worldwide, relatively few children have been reported with COVID-19. . . . Children become less seriously ill and almost never need to be hospitalized because of” COVID- 19).
70. As of July 31, 2021, the CDC reported that the rate of hospitalization with COVID for children between 5 and 17 was 0.5 per 100,000, or about 250 patients. Marty Makary & H. Cody Meissner, Opinion, The Case Against Masks for Children, WALL ST. J. (Aug. 8, 2021), <https://on.wsj.com/3ANwOlt>. Those numbers overestimate the risk because all children admitted to the hospital are tested whether they complained of COVID or some other affliction.
71. The CDC estimates that compared to adults 40 to 49 years of age, children 5 to 17 years of age have 160 times lower risk of death from COVID-19 and 27 times lower risk of hospitalization from COVID-19.” Dena Bravata, Back to School: The Effect of School Visits During COVID-19 on COVID-19 Transmission 9 (Nat'l Bureau of Econ. Research, Working Paper No. 28645, Apr. 2021).
72. Sweden, which kept schools open last year, reported a total of 15 children with Covid-19 were admitted to an ICU (0.77 per 100,000 children in this age group)” between March and June 2020. Jonas F. Ludvigsson, Letter to the Editor, Open Schools, Covid-19, and Child and Teacher Morbidity in Sweden, 384 NEW. ENG. J. MED. 669, 669 (2021).
73. All these studies and data show that children are a small proportion of COVID-19 infections and are at substantially less risk for severe health outcomes than adults.

Low risk of children spreading Covid-19

74. Research and data from the last 18 months overwhelmingly show that the risk of children spreading the coronavirus is minimal.
75. An article published in the New England Journal of Medicine studied and confirmed the direction of the virus’s spread from contact to contact. By studying results from Iceland’s systematic screening

process, the author determined that if children do get the virus, they are less likely to transmit the disease to adults and found that there was not a single instance of a child infecting parents. Daniel F. Gudbjartsson, Ph.D, Agnar Helgason, Ph.D., et al., Spread of SARS-CoV-2 in the Icelandic Population, *N. Eng. J. Med.* (June 11, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMoa2006100>.

76. A French study from April 2020, when there were no vaccines, showed that three schoolchildren who had positive test results became positive from a source other than the school. Arnaud Fontanet, MD, DrPH, Rebecca Grant, et al., SARS-CoV-2 Infection in Primary Schools in Northern France: A Retrospective Cohort Study in an Area of High Transmission, Institut Pasteur, (last visited August 25, 2020), <https://www.pasteur.fr/fr/file/35404/download>.
77. Out of Ireland, researchers followed three children (between ages 10 and 15) and three adults who tested positive in March 2020. After being confined to their homes due to a lockdown, the children had 722 contacts with other people, but the researchers found no instance of a child infecting another child. The adults had fewer contacts (102) and passed it on to other adults. Laura Heavey, Geraldine Casey, et al., No Evidence of Secondary Transmission of COVID- 19 from Children Attending School in Ireland, 2020, *Eurosurveillance*, (May 28, 2020). https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.21.2000903#html_fulltext.
78. A Netherland study confirmed that (1) children play a minor role in the spread of the novel coronavirus, (2) the virus is mainly spread between adults and from adult family members to children, and (3) the spread of COVID-19 among children or from children to adults is less common. Children and COVID-19, National Institute for Public Health and the Environment, (July 2, 2020), <https://www.rivm.nl/en/novel-coronavirus- covid-19/children-and- covid-19>.

79. Similarly, a German study from March 2020 to early May 2020 followed 128 pediatric patients admitted to hospitals. For that limited sample size, the researchers found that the primary source of infection with SARS-CoV-2 appears not to be other children. Armann, J. P., et al., Hospital Admission in Children and Adolescents With COVID-19. *Deutsches Arzteblatt international*, 117(21), 373–374 (2020).
80. In a large study from the United Kingdom studying school environments, the author confirmed that there is very little evidence that the virus is transmitted in schools. Sian Griffiths, Pupils pose little risk of spreading COVID, *THE SUNDAY TIMES* (Aug. 9, 2020), <https://bit.ly/3y9WqYb>.
81. Research studying the effect of school closures on disease spread finds little or no effect of school closure on disease spread. When Sweden kept its schools open, a study found that there was no additional risk to the elderly (a high-risk population) cohabitating with schoolchildren even if children became infected. Brandén, Maria, et al., Residential Context and COVID-19 Mortality among the Elderly in Stockholm: A population-based, observational study. *Stockholm Research Reports in Demography, THE LANCET* (Oct. 27, 2020) [https://www.thelancet.com/journals/lanhl/article/PIIS2666-7568\(20\)30016-7/fulltext](https://www.thelancet.com/journals/lanhl/article/PIIS2666-7568(20)30016-7/fulltext); Covid-19 in schoolchildren: A comparison between Finland and Sweden, Public Health Agency of Sweden (2020), <https://www.folkhalsomyndigheten.se/contentassets/c1b78bffbde4a7899eb0d8ffdb57b09/covid-19-school-aged-children.pdf>.
82. Additionally, teachers in Kansas are eligible to receive a Covid-19 vaccination if they choose.
83. Further, Emory Vaccine Center Director Rafi Ahmed, PhD, reported that antibody responses from naturally infected COVID-19 patients were durable and offered a sustained defense against reinfection. The study additionally suggested that patients who survived COVID-19 are likely to also possess protective immunity even against some of the SARS-CoV-2 variants. Ahmed, Rafi et. al., Longitudinal analysis shows durable and broad immune memory after SARS- CoV-2 infection with

persisting antibody responses and memory B and T cells. *CELL REPORTS MEDICINE* (July 14, 2021) [https://www.cell.com/cell-reports-medicine/fulltext/S2666-3791\(21\)00203-2](https://www.cell.com/cell-reports-medicine/fulltext/S2666-3791(21)00203-2).

84. Several studies show that children do not generally spread the coronavirus, even in school settings. The studies also demonstrate that children have very positive outcomes with a lower risk of death and severe health outcomes.

Masks Harm Children

85. Requiring children to mask is not a mere convenience; there are real costs to such measures.
86. In the United Kingdom, “[f]ace coverings are no longer advised for pupils, staff and visitors either in classrooms or in communal areas.” U.K., Dep’t of Educ., *Guidance: Schools in COVID-19 Operational Guidance* (last updated Aug. 27, 2021), available at <https://www.gov.uk/government/publications/actions-for-schools-during-the-coronavirus-outbreak/schools-covid-19-operational-guidance#face-coverings> (last visited Aug. 27, 2021).
87. A study on mask use in 25,930 schoolchildren found that 68% “complained about impairments caused by wearing the masks,” including “irritability (60%), headache (53%), difficulty concentrating (50%), less happiness (49%), reluctance to go to school/kindergarten (44%), malaise (42%), impaired learning (38%) and drowsiness/fatigue (37%).” Silke Schwarz et al., *Coronakinderstudien co-Ki: Erste Ergebnisse Eines Deutschlandweiten Registers zur Mund- Nasen-Bedeckung (Maske) bei Kindern*, 169 *MONATSSCHRIFT KINDERHEILKUNDE* 353, 355 (2021).
88. Importantly, mask use by young children is detrimental to their communication skills at a critical stage of their development. The World Health Organization notes that masking young children raises social and communication concerns. Specifically, researchers are concerned that masks may “hinder[] verbal and non-verbal communication.” Jonas F. Ludvigsson, *Opinion, Little Evidence for Facemask Use in Children Against COVID-19*, 110 *ACTA PEDIATRICA* 745 745 (2021).

89. One study found, for example, that “children correctly identified the emotional expression on uncovered faces about 66% of the time ... [but] []looking at faces in surgical-type masks, ... were only able to correctly identify sadness about 28% of the time, anger 27% of the time, and fear 18% of the time.” Robert Lee Hotz, Covid Face Masks Are Disrupting a Key Tool of Human Communications, New Research Shows, WALL ST. J.: SCI. J. (Jan. 18, 2021), <https://on.wsj.com/3iO2fWG>; see Clause-Christian Carbon, Wearing Face Masks Strongly Confuses Counterparts in Reading Emotions, FRONTIERS PSYCH., Sept. 2020, at 6. “Covering a child’s face mutes these nonverbal forms of communication and can result in robotic and emotionless interactions, anxiety and depression. Seeing people speak is a building block of phonetic development. It is especially important for children with disabilities such as hearing impairment.” Marty Makary & H. Cody Meissner, Opinion, The Case Against Masks for Children, WALL ST. J. (Aug. 8, 2021), <https://on.wsj.com/3ANwOlt>.

COUNT I – Declaratory Relief

90. Plaintiffs incorporate all previous paragraphs by reference herein as if fully set forth in this count.
91. Pursuant to K.S.A. 65-201, an aggrieved party may file a civil action within 30 days from the issuance of an order of a county public health official.
92. Order No. 001-21 was issued on August 5, 2021; the order became effective on August 9, 2021.
93. Plaintiffs, as individuals and as parents to their minor children, are adversely effected by Order No. 001-21 and the mandatory requirement that a mask be worn in a school building.
94. The purpose of Order No. 001-21 is to “safely provide in-person learning and to slow the spread of COVID-19 in Johnson County elementary level schools.”
95. Order No. 001-21 fails to be narrowly tailored in the following ways:

- a. Johnson County currently does not have a mask mandate issued, meaning the same pre-kindergarten through sixth grade student can walk around anywhere in the county without a mask, except for in their school building;
 - b. Order No. 001-21 is effective until May 31, 2022, a total of 295 days without being subject to review regarding the necessity of the order;
 - c. Order No. 001-21 is a blanket mandatory mask requirement for all, regardless of health status or any display of symptoms;
 - d. Order No. 001-21 fails to consider natural immunity of the individual;
 - e. Order No. 001-21 fails to consider vaccination status of the individual;
 - f. Order No. 001-21 fails to consider the low susceptibility rate of children in grades pre-kindergarten through sixth grade;
 - g. Order No. 001-21 applies to all school buildings, public or private where grades pre-kindergarten through sixth grade “attend class”, regardless of children actually being present in the building at the time;
 - h. Order No. 001-21 arbitrarily limits its applications to individuals where pre-kindergarten through sixth graders attend class; the BOCC simultaneously states that “only 40% of students ages 12-17 have been vaccinated, yet the 60% of unvaccinated children are not mandated by the BOCC to wear a mask while in a school building;
 - i. Order No. 001-21 does not set forth guidelines on how a school is to determine a medical exemption, leading to the exemption being inconsistently applied throughout the various school districts; and
 - j. Order No. 001-21 requires all individuals wear a preemptive medical device without consent.
96. Order No. 001-21 fails to achieve the stated purpose in the least restrictive means in the following ways:

- a. Order No. 001-21 applies to all individuals within a Johnson County school building where pre-kindergarten to sixth grade children attend class;
 - b. Order No. 001-21 is effective until May 31, 2022, a total of 295 days without being subject to review regarding the necessity of the order;
 - c. Order No. 001-21 does not provide a school district to opt out of the Order based on their understanding of their own school district;
 - d. Order No. 001-21 allows for an exemption to wearing a mask so long as “school guidelines” are adhered to while engaged in activities or athletics;
 - e. Order No. 001-21 itself admits there are other, less restrictive means of protecting the health of the student population;
 - f. Order No. 001-21 restricts a parent’s ability to make medical decisions for their child;
 - g. Order No. 001-21 restricts an individual’s ability to make medical decisions for themselves;
 - h. Order No. 001-21 disregards the low susceptibility rate of death, or hospitalization of children as it relates to COVID-19;
 - i. Order No. 001-21 disregards the competing science that wearing a mask is ineffective to slowing the spread of COVID-19; and
 - j. Order No. 001-21 does not allow for an appeal of a decision.
97. Order No. 001-21 is neither narrowly tailored, nor does it use the least restrictive means to achieve the stated purpose within the order.
98. Plaintiffs are injured by Order No. 001-21 and will not obtain relief without court intervention.
99. Plaintiffs bring this cause of action within 30 days of the issuance of Order No. 001-21.

WHEREFORE, for the above foregoing reasons, Plaintiffs requests this Court to issue an order that Order No. 001-21 is neither narrowly tailored nor uses the least restrictive means and is therefore void, for Plaintiffs’ costs and fees of Plaintiff’s consulting medical professionals for the requisite

information to attempt to qualify for a medical exemption, to require each school district within Johnson County to provide clear policies and procedures on how a medical exemption will be determined, require each school district within Johnson County produce clear school guidelines regarding the exemption that applies to a person engaged in activities or athletics while inside the school, for the costs and fees associated with filing this action, reasonable attorney's fees and other further relief this Court deems fair, equitable and just.

**COUNT II – Declaratory Judgment
Order No. 001-21 is void and uneffective**

100. Plaintiffs incorporate all previous paragraphs by reference herein as if fully set forth in this count.
101. It is the general duty of the Secretary of Health and Environment to “take action to prevent the introduction of infectious or contagious disease into [Kansas] and to prevent the spread of infectious or contagious disease within [Kansas].” K.S.A. §65-101.
102. The State of Kansas does not have a mask mandate in effect.
103. Johnson County does not have a mask mandate in effect.
104. Under K.S.A. 19-21, the BOCC has the powers and duties to:
- First.* To make such orders concerning the property belonging to the county as they may deem expedient, including the establishing of regulations, by resolution, as to the use of such property and to prescribe penalties for violations thereof.
- ...
- Sixth.* To represent the county and have the care of the county property, and the management of the business and concerns of the county, in all cases where no other provision is made by law.
- ...
- Eleventh.* To contract for the protection and promotion of the public health and welfare.
- K.S.A. 19-212.
105. Also, the BOCC is authorized to act as the County Board of Health. K.S.A. 65-201.
106. Public school buildings are property of the respective city where they are located and subject to the control of the local school district board of education. K.S.A. 72-1416. Private school buildings are privately owned.

107. The legislature has made a clear delegation of power to “the parent or guardian, and the principal or other person in charge of any public, parochial, private school ...to exclude therefrom any child or other person affected with a disease suspected of being infectious or contagious” K.S.A. 65-122(a).
108. Under K.S.A. 65-202, as amended by SB40, the county local health officer is tasked with investigating cases of infectious disease and helping to remediate and prevent its spread.
109. Issuance of an Order is not a “contract for the protection and promotion of the public health and welfare” even under the most liberal construction of the term.
110. The BOCC has not been granted the authority to issue a mask mandate requiring persons *inside* a school take a particular action.
111. The Johnson County health officer and BOCC have not identified or investigated a case of COVID-19 in each school building affected by Order 001-21.
112. K.S.A. 65-119 is cited by the BOCC as a source of authority to issue Order No. 001-21.
113. The Secretary of Health and Environment has empowered and authorized a county, joint board of health, or local health officer “*to prohibit public gatherings* when necessary for the control of any and all infectious or contagious disease.” K.S.A. 65-119(a).
114. The Secretary of Health and Environment did not provide authority to the BOCC to issue a mask mandate on healthy people.
115. SB40 is unconstitutional and, therefore, ineffectual.
116. Alternatively, if SB40 is constitutional, it does not provide authority to the BOCC to mandate masks for healthy people unaffected by a contagious disease.
117. The statutory authority of both the local health officer or the BOCC does not confer the authority to mandate “[t]he Board of Education for each unified school district within Johnson

County and the respective governing body of each K-12 private school within Johnson County” to comply with Order No. 001-21.

118. Under the Kansas Constitution, school boards are granted powers to operate in the best interest of the school district subject to the limitations of the State Boards of Education or Legislation. Kan. Const. Art. 6, Section 5.
119. Constitutionally, a public school board is authorized to maintain, develop and operate a school district, and to make and to “carry out agreements for cooperative operations and administration of education programs”. *Id.*
120. Order No. 001-21 thwarts the authority of a Board of Education of public schools and the respective governing bodies of private schools in Johnson County to make decisions for the schools they are elected to represent.
121. Under the Kansas Constitution, school boards are granted powers to operate in the best interest of the school district subject to the limitations of the State Board of Education or State Legislature. Kan. Const. Art. 6, Section 5.
122. Constitutionally, a public school board is authorized to maintain, develop, and operate a school district, and to make and to “carry out agreements for cooperative operations and administration of education programs.” *Id.*
123. Plaintiffs are harmed by this conferral of enforcement authority to the local Board of Education or the respective governing body of a private school in Johnson County.

WHEREFORE, for the above and foregoing reasons, Plaintiffs respectfully request this Court declare the BOCC, acting as the County Board of Health, acted outside the scope of its authority by requiring an elected body enforce Order No. 001-21 and for costs and other further relief this Court deems fair, equitable and just.

COUNT III--Declaratory Relief

Judicial notice of Judge Hauber's ruling that SB40 is unconstitutional in Johnson County District Court *Butler v. Shawnee Mission School District*, 21-CV-2385.

124. Plaintiffs incorporate all previous paragraphs by reference herein as if fully set forth in this court.
125. Order No. 001-21 claims authority given in K.S.A. § 65-202, K.S.A. § 65-119(a) and K.S.A. § 60-5502.
126. This Court can take judicial notice of Judge Hauber's findings in *Butler* that on its face, SB40's amendments to K.S.A. § 65-201 is an unconstitutional overreach into the judicial branch.
127. The entire additional text of K.S.A. § 65-201, as amended by SB40, is unconstitutional and void, and the savings clause in § 14 does not revive the non-offending provisions.
128. The remaining provisions of public health laws amended by SB40 do not give the BOCC the authority to issue a school mask mandate for everyone inside a Johnson County school building where pre-kindergarten through sixth grade children attend class.
129. Without SB40, the BOCC does not have the vested authority to require masks be worn within a the county.
130. The BOCC, sitting as the Johnson County Board of Health, is only authorized and empowered "to prohibit public gatherings when necessary for the control of any and all infectious or contagious disease." K.S.A. § 65-119.
131. The Legislature has determined that: "It shall be the duty of the parent or guardian, and the principal or other person in charge of any public, parochial, private school ... to exclude therefrom any child or other person affected with a disease suspected of being infectious or contagious until the expiration of the prescribed period of isolation or quarantine for the particular infectious or contagious disease." K.S.A. § 65-122.
132. It us up to the parent, guardian or the principal or other person in charge of a public, parochial, private school or licensed child care facility, not the BOCC, to exclude an *infected* person who wants to be admitted into a school building where pre-kindergarten through sixth grade children are taught.

This requires that the person excluded exhibit symptoms. It does not authorize the Secretary to mandate that a mask be worn or for the exclusion of an otherwise healthy person based on a refusal to wear a mask.

133. “[A]ny other person” as used in K.S.A. §65-122 does not include the BOCC.
134. The Secretary of Health and Environment is to step in and order a quarantine “[w]henver the county or joint board of health or the local health officer neglects to properly isolate and quarantine infectious or contagious diseases and persons afflicted with or exposed to such diseases.” K.S.A. § 65-126.
135. Prior to the amendments in SB40, the Legislature authorized boards of county commissioners to issue orders, as it relates to public health, “*that are less stringent than the provisions of an executive order effective statewide issued by the governor.*” K.S.A. § 48-925(h).
136. The Kansas Legislature has not authorized any official to mandate any action regarding healthy people who do not exhibit symptoms of COVID-19.
137. Because the SB40 amendment to K.S.A. § 65-201 is unconstitutional, with an ineffective savings clause, as decided by Judge Hauber, the BOCC lacks authority to issue Order No. 001-21.
138. Plaintiffs’ constitutional rights are injured by the enactment and enforcement of Order No. 001-21, as it directly impacts their rights and obligations connected with admission to a school building where children school ages pre-kindergarten through sixth grade attend class.

WHEREFORE, for the above and foregoing reasons, Plaintiffs respectfully request this Court take judicial notice of Judge Hauber’s ruling in *Baker*, issue an order finding K.S.A. § 65-201, as amended by SB40, unconstitutional on its face, that Order No. 001-21 is void as it was made without constitutional or statutory authority, and for costs and other further relief this Court deems fair, equitable and just.

COUNT IV—Declaratory Relief

K.S.A. § 65-201 as amended by SB40 is unconstitutional in violation of Separation of Powers

139. Plaintiffs incorporate all previous paragraphs by reference herein as if fully set forth in this count.

140. K.S.A. § 65-201(b), as amended by SB40, states:

(b)(1) Except as provided in paragraph (2), any order issued by the local health officer, including orders issued as a result of an executive order of the governor, ***may be reviewed, amended or revoked by the board of county commissioners of the county*** affected by such order at a meeting of the board. Any order reviewed or amended by the board shall include an expiration date set by the board and may be amended or revoked at an earlier date by a majority vote of the board.

K.S.A. § 65-201.

141. SB40 unconstitutionally gave the BOCC and the appointed local health officer the power to “review[], amend[] or revoke[]” an executive order of the governor.

142. “No special privileges or immunities shall ever be granted by the legislature, which may not be altered, revoked or repealed by the same body; and this power shall be exercised by no other tribunal or agency.” Kan. Const. Bill of Rts. § 2.

143. The BOCC may “perform all powers of local legislation and administration it deems appropriate” except that they “may not exempt from or effect changes in K.S.A. § 65-201 and K.S.A. § 65-202, and amendments thereto.” K.S.A. § 19-101a(a)(39).

144. SB40 unconstitutionally encroaches on the power of the executive branch by conferring power to the legislative branch to alter, revoke or repeal orders of the executive branch.

145. Plaintiffs are injured by the unconstitutional power conferred upon the BOCC.

WHEREFORE, Plaintiffs request this Court to declare K.S.A. § 65-201, as amended by SB40, unconstitutional on its face because it violates separation of powers, for costs and fees, and for other further relief this court deems fair, just, and equitable.

COUNT V—Declaratory Relief
Order No. 001-21, issued pursuant to the statutory authority of K.S.A. § 65-201 and SB40,
unconstitutionally exerts control over school districts by the BOCC.

146. Plaintiffs incorporate all previous paragraphs by reference herein as if fully set forth in this count.

147. Kan. Const. art. VI, § 2 directs the Legislature to provide “for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.”

148. The state board of education shall have the powers that it is specified to have in the constitution as such powers are more specifically described and defined by law. K.S.A. § 72-245(c).

149. “[T]he state board [of education] may exercise its constitutional power of supervision without ancillary legislation and that its authority in that limited respect could not be thwarted by legislative failure to adopt supplementary legislation.” *State ex rel. Miller v. Bd. of Ed. of Unified Sch. Dist. No. 398, Marion Cty. (Peabody)*, 212 Kan. 482, 486, 511 P.2d 705, 709 (1973)

150. The legislature is authorized to pass legislation to facilitate the powers of the State Board of Education; however, it is unconstitutional to provide the local boards of county commissioners with the power to issue compulsory orders impacting students, visitors, faculty and staff within school buildings under the jurisdiction of the State Board of Education.

151. Plaintiffs are injured by the unconstitutional power conferred upon the BOCC.

WHEREFORE, Plaintiffs respectfully request this Court to declare Order No. 001-21 facially unconstitutional, as it is based upon unconstitutional power conferred by SB40, for costs and fees, and for other further relief this Court deems fair, just, and equitable

COUNT VI

Violation of Equal Protection Laws guaranteed by § 1 of the Kansas Constitution Bill of Rights

152. Plaintiffs incorporate all previous paragraphs by reference herein as if fully set forth in this count.

153. Under § 1 of the Kansas Constitution Bill of Rights, Plaintiffs “are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.”

154. Compulsory masking of healthy individuals who exhibit no symptoms of any contagious infection as a condition while admitted to a Johnson County school building where pre-kindergarten through sixth grade children attend class deprives Plaintiffs of their constitutional rights of liberty and to pursue happiness.
155. Order No. 001-21 provides exemptions as set forth in Paragraph 55 above. See Exhibit 1.
156. Order No. 001-21 provides for general medical exemptions but does not specify how those exemptions will be determined. Rather, it leaves the determination to the individual school districts.
157. Not all exemptions in Order No. 001-21 are medical-based. There exist broad religious exemptions.
158. There are no exemptions for learning disabled, non-english speaking, intellectually disabled, or other people adversely effected by this Order.
159. Persons are exempt from the mask requirement if “engaged in activities and athletics” who follow KSHSAA or school guidelines which allows an individual school to supersede Order No. 001-21 depending on their “guidelines”.
160. Order No. 001-21 is not neutral on its face.
161. “Because the challenged restrictions are not “neutral” and of “general applicability,” they must satisfy ‘strict scrutiny,’ and this means that they must be ‘narrowly tailored’ to serve a ‘compelling’ state interest.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67, 208 L. Ed. 2d 206 (2020).
162. Order No. 001-21 fails to be narrowly tailored in the following ways:
 - a. Johnson County currently does not have a mask mandate issued, meaning the same pre-kindergarten through sixth grade student can walk around anywhere in the county without a mask, except for in their school building.
 - b. Order No. 001-21 is effective until May 31, 2022, a total of 295 days without being subject to review regarding the necessity of the order;

- c. Order No. 001-21 is a blanket mandatory mask requirements for all, regardless of health status or any display of symptoms;
 - d. Order No. 001-21 fails to consider natural immunity of the individual;
 - e. Order No. 001-21 fails to consider vaccination status of the individual;
 - f. Order No. 001-21 fails to consider the low susceptibility rate of children in grades pre-kindergarten through sixth grade;
 - g. Order No. 001-21 applies to all school buildings, public or private where grades pre-kindergarten through sixth grade “attend class”, regardless of children actually being present in the building at the time;
 - h. Order No. 001-21 arbitrarily limits its applications to individuals where pre-kindergarten through sixth graders attend class; the BOCC simultaneously states that “only 40% of students ages 12-17 have been vaccinated, yet the 60% of unvaccinated children are not mandated by the BOCC to wear a mask while in a school building;
 - i. Order No. 001-21 does not set forth guidelines on how a school is to determine a medical exemption, leading to the exemption being inconsistently applied throughout the various school districts; and
 - j. Order No. 001-21 requires all individuals wear a preemptive medical device without consent.
163. Order No. 001-21 fails to achieve the stated purpose in the least restrictive means in the following ways:
- a. Order No. 001-21 applies to all individuals within a Johnson County school building where pre-kindergarten to sixth grade children attend class;
 - b. Order No. 001-21 is effective until May 31, 2022, a total of 295 days without being subject to review regarding the necessity of the order;

- c. Order No. 001-21 does not provide a school district to opt out of the Order based on their understanding of their own school district;
 - d. Order No. 001-21 allows for an exemption to wearing a mask so long as “school guidelines” are adhered to while engaged in activities or athletics;
 - e. Order No. 001-21 itself admits there are other, less restrictive means of protecting the health of the student population;
 - f. Order No. 001-21 restricts a parent’s ability to make medical decisions for their child;
 - g. Order No. 001-21 restricts an individual’s ability to make medical decisions for themselves;
 - h. Order No. 001-21 disregards the low susceptibility rate of death, or hospitalization of children as it related to COVID-19;
 - i. Order No. 001-21 disregards the competing science that wearing a mask is ineffective to slowing the spread of COVID-19; and
 - j. Order No. 001-21 does not allow for an appeal of a decision.
164. Order No. 001-21 is neither narrowly tailored to purpose of the Order, nor does it use the least restrictive means.
165. The BOCC does not have a compelling interest in treating unvaccinated seventh through twelfth grade students differently than unvaccinated per-kindergarten through sixth grade students; arguably the two groups are indistinguishable.
166. Plaintiffs are injured by this unconstitutional order and are subject to administrative penalties imposed by school districts, including exclusion for attendance, and statutory penalties ranging from a fine, to a misdemeanor. K.S.A. § 65-116(g), K.S.A. § 65-127, and K.S.A. § 65-129.

WHEREFORE, Plaintiffs request this Court find Order No. 001-21 is unconstitutional, fails to be narrowly tailored and serves no compelling state interest, and for costs and fees, and for other, further relief this Court deems fair, just, and equitable.

COUNT VII

Violation of the Special Education for Exceptional Children Act, K.S.A. § 72-3403, *et. seq.* and the Equal Protection Clause of Section 1 of the Kansas Constitution Bill of Rights

167. Plaintiffs incorporate all previous paragraphs by reference herein as if fully set forth in this count.
168. It is the public policy of Kansas “that parents shall retain the fundamental right to exercise primary control over the care and upbringing of their children in their charge.” K.S.A. § 38-141(b).
169. “Nothing in subsection (b) shall be interpreted to expand, diminish or in any way alter the scope of the rights of parents or children.” K.S.A. § 38-141(c).
170. Any parent, or any person authorized by law to act on behalf of a child may maintain a cause of action in the name of such child, may maintain a cause of action in state court or in any court of competent jurisdiction for claims arising under the principles established in subsection (b). K.S.A. § 38-141(d).
171. Order No. 001-21 violates the principles in K.S.A. § 38-141(b) by forcing asymptomatic and healthy children wear a mask in school buildings where pre-kindergarten through sixth grade children attend class without parental consent and often times against parental beliefs.
172. Face masks do not prevent the spread of COVID-19.
173. Order No. 001-21 requires all individuals to wear a mask unless they qualify for an exemption. This includes children with intellectual and hearing disabilities.
174. While an exemption exists in Order No. 001-21 for the individual with a hearing disability, the fact remains a hearing-impaired student must interact with others whose faces are covered.
175. “Anyone with hearing impairment will have difficulty with muffled speech due to facemask. Thus, covering of face by mask can cut down on the ability to connect, especially with the hearing-

impaired or deaf community.”⁸

176. The Kansas Special Education for Exceptional Children Act, implements the Federal Individuals with Disabilities Act, (“IDEA”) 20 U.S.C.A. § 1400 *et. seq.* which guarantees students with disabilities are entitled to a free appropriate public education. K.S.A. § 72-3403, *et. seq.*.
177. “Exceptional children” means persons who are children with disabilities or gifted children and are school age, to be determined in accordance with rules and regulations adopted by the state board, which age may differ from the ages of children required to attend school under the provisions of K.S.A. 72-3120. K.S.A. § 72-3404(g).
178. “Free appropriate public education” means special education and related services that: (1) Are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the state board; (3) include an appropriate preschool, elementary, or secondary school education; and (4) are provided in conformity with an individualized education program. K.S.A. § 72-3404(p).
179. “Children with disabilities and their parents are afforded the procedural safeguards required by section 1415 of this title.” 20 U.S.C.A. § 1412 (a)(6)(A). Those safeguards are codified in K.S.A. § 72-3415 providing due process hearings for parents of exceptional children.
180. To meet its substantive obligation under the IDEA, a school must offer an Individual Education Plan (“IEP”) reasonably calculated to enable a child to make progress appropriate considering the child's circumstances. *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 999, 197 L. Ed. 2d 335 (2017).
181. “Any State educational agency, State agency, or local educational agency that receives assistance under this subchapter shall establish and maintain procedures ...to ensure that children with

⁸ Garg, S., Deshmukh, C. P., Singh, M. M., Borle, A., & Wilson, B. S. (2021). Challenges of the Deaf and Hearing Impaired in the Masked World of COVID-19. *Indian journal of community medicine : official publication of Indian Association of Preventive & Social Medicine*, 46(1), 11–14. https://doi.org/10.4103/ijcm.IJCM_581_20

disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.” 20 U.S.C.A. § 1415(a).

182. Children are required to attend school, and the state has a duty to provide a free appropriate education for all disabled children within its borders. K.S.A. § 72-3115.
183. BOCC Order No. 001-21 does not provide the school districts with the ability to ensure procedural safeguards are in place to ensure a free appropriate public education to children with disabilities.
184. The exclusive exemptions listed Order No. 001-21 do not authorize school districts to offer an exemption based on an individual’s need or IEP.
185. Plaintiffs Dawn Teager and Emily Gurney’s children’s ability to communicate and understand their peers, teachers and others, and others in need of an IEP, are substantially and adversely impacted by the facial coverings of others.

WHEREFORE, Plaintiffs request this Court find that Order No. 001-21 is void as it does not offer protections to those who qualify for IDEA, as implemented by the Special Education for Exceptional Children Act, violates Equal Protection as guaranteed by § 1 of the Kansas Constitution Bill of Rights, and violates Plaintiff’s rights under K.S.A. 38-141(b), for costs and fees and for other further relief this Court deems fair, just, and equitable.

COUNT VIII

Violation of Due Process of Law guaranteed by § 1 of the Kansas Constitution Bill of Rights.

186. Plaintiffs incorporate all previous paragraphs by reference herein as if fully set forth in this count.
187. Plaintiffs, as individuals, are subject to Order No. 001-21 upon entering a Johnson County school building where pre-kindergarten through sixth grade students are located.
188. Plaintiffs, as individuals, have a fundamental right to make decisions concerning whether they, as a healthy person, will wear a medical device, or to take preemptive medical intervention steps.

189. Plaintiffs, as parents, have a legitimate claim of entitlement to the care and upbringing of their children. K.S.A. 38-141(b).
190. Plaintiff parents have a fundamental right to make decisions concerning whether they will require their healthy children to wear a medical device.
191. Order No. 001-21 unconstitutionally encroaches on Plaintiffs' due process rights regarding the compulsory medical intervention requiring a medical device be worn by healthy individuals.
192. Order No. 001-21 states that any documentation to qualify for a medical exemption should be provided in accordance with the school guidelines.
193. There is no uniform guideline or procedure in Order No. 001-21 delineating how medical exemptions will be decided by a school district.
194. School districts are left to their own devices to decide qualifications for a medical exemption, leading to an erratic application of Order No. 001-21.
195. There are no uniform guidelines or procedures in Order No. 001-21 delineating how, if, or when a person may appeal a decision regarding their medical exemption.
196. There are no uniform guidelines or procedures in Order No. 001-21 for Plaintiffs to request an exemption not contemplated in Paragraph 2 of Order No. 001-21.
197. Plaintiffs are not given the option to exclude themselves, or their children from this compulsory medical intervention unless they qualify for a predetermined exemption.
198. Neither public nor private schools are given the opportunity to opt-out of Order No. 001-21.
199. There are no uniform guidelines or procedures in Order No. 001-21 delineating how a school district is to enforce Order No. 001-21.
200. While the enforcement provision of Order No. 001-21 places the burden on local school districts to enforce compliance, there are other statutory penalties Plaintiffs face for refusing to follow the unconstitutional mask mandate.

201. There is no effective due process for Plaintiffs to object to Order No. 001-21. It is up to the whim of the local school boards to determine whether an individual qualifies for a delineated exemption.
202. Plaintiffs are not entitled to apply for an exemption unless it is pre-qualified. Order No. 001-21, Paragraph 2, Exhibit 1. See Paragraph 55 above.
203. Plaintiffs are injured by being forced to comply with an unconstitutional order or face a variety of consequences, including exclusion from the school.
204. Plaintiffs are injured by this unconstitutional order and are subject to administrative penalties imposed by statutory penalties ranging from a fine, to a misdemeanor with no manner to apply for an exemption to come into compliance. K.S.A. § 65-127, K.S.A. § 65-116(g) and K.S.A. § 65-129.

WHEREFORE, Plaintiffs request this Court find that Order No. 001-21 is a violation of Plaintiffs' due process, that Order No. 001-21 conflicts with K.S.A. 38-141(b), for costs and fees and for other further relief this Court deems fair, just, and equitable.

COUNT IX

Violation of the free speech provisions of Section 11 of the Kansas Constitution Bill of Rights

205. Plaintiffs incorporate all previous paragraphs by reference herein as if fully set forth in this count.
206. Public sentiment regarding masking is varied, and disagreements regarding the requirements are hotly debated.
207. As early as May 5, 2020, a headline from Politico on May 5, 2020 reads *Wearing a mask is for smug liberals. Refusing to is for reckless Republicans*,⁹ an AP headline from May 6, 2020: *Face masks make a political statement in era of coronavirus*.¹⁰ One AP report stated, "The decision to wear a mask in public is

⁹ <https://www.politico.com/news/2020/05/01/masks-politics-coronavirus-227765>

¹⁰ <https://news.yahoo.com/face-masks-political-statement-era-041357998.html>

becoming a political statement — a moment to pick sides in a brewing culture war over containing the coronavirus.”¹¹

208. The polarization of masking has only become more divisive as time goes on.

209. Those wearing masks are deemed “pro-mask” and those who do not wear a mask are deemed to be “anti-mask” regardless of the reasons behind their choice.

210. “First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506, 89 S. Ct. 733, 736, 21 L. Ed. 2d 731 (1969).¹²

211. Whether intended to be or not, wearing a mask is akin to pure speech. Merely placing a mask on one’s face is a statement in the public square.

212. Plaintiffs are being required by a government actor to wear a mask regardless of their views.

213. “Speech deals with matters of public concern when it can ‘be fairly considered as relating to any matter of political, social, or other concern to the community,’ ... , or when it ‘is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public,” *Snyder v. Phelps*, 562 U.S. 443, 453, 131 S. Ct. 1207, 1216, 179 L. Ed. 2d 172 (2011) (internal citations omitted).

214. Mask mandates are of great political and social concern to the community.

¹¹ <https://apnews.com/article/virus-outbreak-donald-trump-ap-top-news-politics-health-7dce310db6e85b31d735e81d0af6769c>; <https://www.newsmax.com/us/mask-ppe-virus-pandemic/2020/05/07/id/966452/>

¹² “[S]ection 1 of the Kansas Constitution Bill of Rights acknowledges rights that are distinct from and broader than the United States Constitution and that our framers intended these rights to be judicially protected against governmental action that does not meet constitutional standards.” *Hodes & Nausser, MDs, P.A. v. Schmidt*, 309 Kan. 610, 624, 440 P.3d 461, 471 (2019)

215. “[T]he right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all.” *Wooley v. Maynard*, 430 U.S. 705, 714, 97 S. Ct. 1428, 1435, 51 L. Ed. 2d 752 (1977).
216. “The First Amendment’s safeguard against state action ‘includes both the right to speak freely and the right to refrain from speaking at all.’” *Cressman v. Thompson*, 798 F.3d 938, 951 (10th Cir. 2015).
217. The BOCC has unconstitutionally ordered all students, faculty, and visitors of school buildings where pre-kindergarten through sixth grade children attend class, to wear a mask that many view is an expression of the wearer’s opinion in violation of the First Amendment.
218. In the Tenth Circuit, “to state a proper compelled-speech claim, a plaintiff must object to a message conveyed by the speech he is required to utter.” *Cressman*, 798 F.3d at 961.
219. By wearing a mask, the wearer is forced to utter that they agree with the overreach of Order No. 001-21 and that they believe that masks provide protection. Plaintiffs wholeheartedly disagree with the statement wearing a mask conveys.
220. “In order to compel the exercise or suppression of speech, the government measure must punish, or threaten to punish, protected speech by governmental action that is ‘regulatory, proscriptive, or compulsory in nature.’” *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1289 (10th Cir. 2004) (quoting *Pbelan*, 235 F.3d at 1247).
221. Plaintiffs are compelled to wear a mask by the BOCC enacting Order No. 001-21 and are subject to the punishments decided by the individual school boards in Johnson County.
222. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976) (plurality opinion).
223. Plaintiffs are at risk of losing their First Amendment freedoms because this mandatory mask requirement compels Plaintiffs to make a statement.

WHEREFORE, Plaintiffs request this Court to find that Order No. 001-21 is unconstitutional and compels speech in violation of Section 11 of the Kansas Constitution Bill of Rights, to invalidate Order No. 001-21, for costs and fees, and for other further relief this Court deems fair, just, and equitable.

COUNT X—Injunctive Relief—SB40 Unconstitutional

224. Plaintiffs incorporate all previous paragraphs by reference herein as if fully set forth in this count.

225. SB40 has been found to be unconstitutional in *Butler*, 21-CV-2385, and Plaintiffs raised other unconstitutional aspects of Johnson County Board of Health Public Health Order No. 001-21.

226. There is a reasonable probability of irreparable future injury to Plaintiffs in the enforcement of this unconstitutional law requiring otherwise healthy individuals to wear a face covering while inside a Johnson County school where pre-kindergarten through sixth grade children attend class.

227. Johnson County schools resumed classes on August 12, 2021.

228. Plaintiffs, for various reasons, disagree with the concept of masking and dispute the “settled science” that has been cited to support mask mandates.

229. Plaintiffs will not be complying with any order requiring masks, including Order No. 001-21 herein disputed. Plaintiffs and their respective children refuse to wear masks and will be in violation of Order No. 001-21, resulting in unspecified and nonuniform potential punishment for such a violation.

230. In the alternative, Plaintiffs will be forced to comply with the mandate, causing undue interference with their ability to learn, compelling speech they do not agree with and potentially exposing them to other health risks associated with wearing a face covering for up to 7 hours a day.

231. There is a risk that the County or school districts within the County will enforce compliance with Order No. 001-21, and enforcement is undefined and subject to the whims of each individual school board.
232. Plaintiffs cannot receive relief through legal means unless they actively oppose the mask mandate and are punished for violation thereof.
233. As school has started, Plaintiffs are subject to Order No. 001-21; if it remains in force, Plaintiffs do not have an adequate remedy to keep them from being punished for violation of the unconstitutional provisions.
234. Furthermore, Plaintiffs face punitive consequences for not following the dictates of Order No. 001-21. The prospect of being punished for violating Order No. 001-21 that is an injury that significantly outweighs the potential damage to the BOCC that would arise from not enforcing Order No. 001-21.
235. The injunction, if issued, would not be averse to the public interest. Those who want to wear a mask can still wear a mask, and it is consistent with the interest of the public to deny enforcement of a void order.
236. K.S.A. § 65-201, as modified by SB40 is unconstitutional, and any order enacted based on it is void.
237. SB40 has been previously found to be facially unconstitutional, and there is a reasonable probability that Plaintiffs will succeed on the merits.
238. Plaintiffs are subject to enforcement efforts by opposing Order No. 001-21. The injury is irreparable and there exists no adequate remedy at law.

WHEREFORE, Plaintiffs request this court issue a permanent injunction prohibiting Johnson County from enforcing Order No. 001-21, for costs and fees and for other, further relief this Court deems fair, just and equitable.

PLAINTIFFS DEMAND A JURY TRIAL ON ALL TRIABLE ISSUES.

Respectfully submitted,

PROTZMAN LAW FIRM, LLC

By:

/s/Andrew B. Protzman

Andrew B. Protzman, KS 18015

4001 W. 114th Street

Suite 110

Leawood, Kansas 66211

PH (816)-421-5100

Fax (816) 421-5105

andy@protzmanlaw.com

Attorney for Plaintiffs

JOHNSON COUNTY BOARD OF HEALTH ORDER NO. 001-21

Applicable within the entirety of Johnson County, Kansas

This Public Health Order is issued by the Board of County Commissioners of Johnson County, Kansas, sitting as the County Board of Health, on August 5, 2021 and is effective the 9th day of August 2021, at 12:01 A.M. to ensure elementary level schools in Johnson County can safely provide in-person learning and to slow the spread of COVID-19 in Johnson County elementary level schools, pursuant to the authority provided in K.S.A. 65-119 and other applicable laws or regulations.

The Board, sitting and acting as the County Board of Health, upon a motion duly made, seconded, and carried adopted the following Order, to-wit:

WHEREAS, COVID-19 is a respiratory disease that spreads easily from person to person and may result in serious illness or death among some who are infected; and

WHEREAS, the United States Department of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 34,722,631 cases of the illness and more than 609,853 deaths as a result of the illness across the United States; and

WHEREAS, on March 19, 2020, the Board of County Commissioners of Johnson County issued a state of local disaster emergency declaration, which was renewed and extended on May 28, 2020, and which remains in place at the time of this Order; and

WHEREAS, as of this date, in Kansas there have been 330,932 reported positive cases of COVID-19 spread among all 105 counties, including 5,247 deaths; and

WHEREAS, COVID-19 has resulted in 48,983 reported positive cases of COVID-19 in Johnson County and the deaths of 679 Johnson County residents; and

WHEREAS, the highly transmissible Delta variant of COVID-19 is now the dominant strain in Johnson County, resulting in a rapid increase in new cases and numerous outbreaks associated with summer camps and school-age programs; and

WHEREAS, children under the age of 12 are not currently eligible for vaccines and approximately less than forty percent (40%) of children aged 12-17 years in Johnson County have been fully vaccinated against COVID-19; and

WHEREAS, K-12 students benefit from in-person learning and interactions with others; and

WHEREAS, under state law, children between the ages of 7 and 18 are required to attend school; and

WHEREAS, safely returning to in-person classes and keeping public and private K-12 schools open in Johnson County is of the highest priority for students, parents, schools, and the entire community; and

WHEREAS, Centers for Disease Control and Prevention (“CDC”) now recommends universal indoor masking for all teachers, staff, students, and visitors to K-12 schools regardless of vaccination status; and

WHEREAS, wearing face masks while indoors at school will protect the health of Johnson County elementary level students while they are awaiting vaccinations; and

WHEREAS, wearing a mask or other face covering in school gets and keeps children in school and is an effective means to protect students and mitigate the spread of COVID-19 while in school; and

WHEREAS, the intent of this Order is not to deprive any person or entity of any rights protected by the United States Constitution, the Kansas Constitution, or any other law, but merely to set forth restrictions which would best protect Johnson County schools, students, faculty, and staff against the community spread of COVID-19; and

WHEREAS, the Board of County Commissioners of Johnson County, as the County Board of Health, and the Local Health Officer are authorized and required, pursuant to K.S.A. 65-119, to immediately exercise and maintain supervision over known or suspected cases of any infectious or contagious disease during its continuance and to see that all such cases are properly handled, and the Local Health Officer is to use all known measures to prevent the spread of any infectious, contagious, or communicable disease;

WHEREAS, the Local Health Officer is appointed by the Board of County Commissioners of Johnson County pursuant to K.S.A. 65-201, and the Local Health Officer proposes and recommends that masks or other face coverings be worn by students through and including 6th grade while inside school buildings to slow the spread of COVID-19 in Johnson County schools; and

WHEREAS, Johnson County Department of Health and Environment (JCDHE) works in partnership with Johnson County public and private schools to keep our schools open so that our children can learn and benefit from interactions with others. JCDHE will collaborate with and provide guidance to schools on the wearing of masks while in school; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the County’s responsibility to provide for and ensure the health, safety, security, and welfare of the people of Johnson County, requiring that masks or other face coverings be worn by students through and including 6th grade while inside school buildings is a highly effective measure that can be taken to slow and reduce the spread of COVID-19 in our schools and community; and

NOW, THEREFORE, BE IT ORDERED by the Board of County Commissioners of Johnson County, Kansas, sitting and acting as the County Board of Health, that:

Section I. Maintaining Healthy School Environments for Elementary Level Students

1. To ensure that schools may operate as safely as possible, public and private schools for students up to and including 6th grade shall require the following:
 - a. Masks or other face coverings are required for all children while inside a school building where any students through and including 6th grade attend class, unless actively eating or drinking. This requirement includes children in higher grades who attend school in buildings where children in 6th or lower grades also attend school unless 6th graders are physically separated from higher grades throughout the school day.
 - b. Masks or other face coverings are required for all faculty, staff, and visitors while inside a school building where any students through and including 6th grade attend class, unless actively eating or drinking.
 - c. Unless otherwise required by the school, children, faculty, staff, and visitors do not need to wear masks when outdoors on school property. This includes students, faculty and staff participating in elementary level recess.
 - d. All bus riders must wear a mask when riding on a school bus unless documentation has been submitted to the school for a medical mask exemption.
2. The following individuals are exempt from wearing masks or other face coverings while inside school buildings:
 - a. Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
 - i. For students, faculty and staff, documentation of the above condition should be provided to the appropriate school officials pursuant to school guidelines.
 - b. Persons communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication.
 - c. Persons engaged in religious services, ceremonies or activities.
 - d. Persons engaged in activities and athletics inside school buildings, who should follow KSHS and/or school guidelines.

3. "Mask or other face covering" means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A mask or other face covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. A mask or other face covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels.

Section II. Lawful Order. This Order is a lawfully issued order pursuant to K.S.A. 65-202 and K.S.A. 65-119(a) and is also a "public health directive" as identified in KSA 60-5502. This Order shall apply to all public and private K-12 schools within Johnson County. The Board of Education for each unified school district within Johnson County and the respective governing

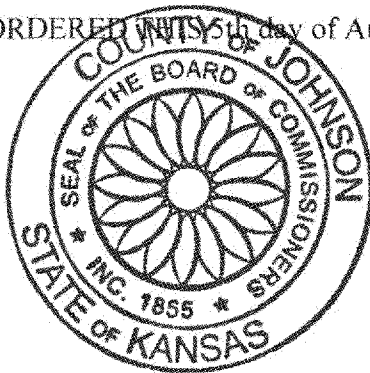
body of each K-12 private school within Johnson County shall be responsible for enforcement of this Order.

Section III. Review by Board of County Commissioners. The Board of County Commissioners may review, amend, or revoke this Order at any time.

Section IV. Severability. If any portion of this Order is found or determined to be invalid, such finding, or determination shall only affect the portion of the Order that is at issue and shall not affect the validity of the remainder of the Order.

Section V. Effective Date; Conclusion. This Order is effective at 12:01 A.M. on Monday, the 9th day of August 2021, and shall remain in effect through 11:59 P.M. on May 31, 2022, unless it is amended, revoked, or replaced.

IT IS SO ORDERED THIS 5th day of August, 2021.




BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY, KANSAS


Ed Eilert, Chairman

ATTEST:


Lynda Sader
Deputy County Clerk

APPROVED AS TO FORM:


Peggy A. Trent
Chief Counsel

Approved 5-2 (CO MA)

FILED

AUG 05 2021

DEPUTY COUNTY CLERK
JOHNSON COUNTY KANSAS